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CONSEQUENCE TO UNDER-TENURES

OF THE

SALE OF AN ESTATE

FOR

ARREARS OF REVENUE.

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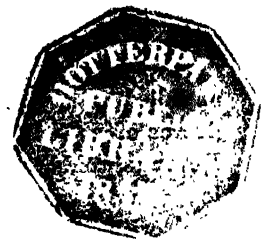
EXTRACTS FROM THE CORRESPONDENCE CONNECTED WITH THE PASSING OF THE SALE LAW, ACT No. XII. OF 1841.

LIST OF FURTHER PAPERS REGARDING THE CONI TO UNDER-TENURES OF THE SALE OF AN ESTATE ARREARS OF REVENUE.



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CONSEQUENCE TO UNDER-TENURES

OF THE

SALE OF AN ESTATE FOR ARREARS OF REVENUE.

EXTRACTED FROM THE CORRESPONDENCE CONNECTED WITH THE PASSING OF THE SALE LAW, ACT No. XII. 1841.

EXTRACTS.

No. 1.

Extracts from a Minute by Mr. Ross, Member of Council, on a new Sale Law proposed by the Sudder Board of Revenue: dated 10th August, 1833.

In regard to the practice mentioned by the Presidency Sudder Board of Revenue, of defaulting Zemindars allowing their Estates to be brought to sale for arrears of Revenue, and purchasing the Estates themselves in a fictitious name, it is resorted to, I believe, only by Zemindars who have recently acquired and consequently possess a large proprietary interest in their Estates. The main object of the practice is to get rid of existing leases, and to obtain an immediate increase of rental by a fraudulent application of the Regulation which annuls the leases of Zemindars when their Estates are sold for arrears of Revenue; a Regulation the existence of which not only operates perniciously, by inducing the practice adverted to, but opposes a complete bar to agricultural improvement, by depriving leaseholders of all security in the stability of their leases. This Regulation, I think, should be immediately rescinded; and all leases granted by Zemindars, and other landholders empowered to grant them, held valid, and not liable to be

Bengal Rev. Cons. 10th Nov. 1834, No. 95.

annulled on any pretext whatever, until adjudged to be collusive by decree of a Court of Justice passed in a regular suit.* The public Revenue would be sufficiently protected against the effects of collusive leases, were such leases, like other fraudulent transactions, left to be dealt with by the Courts according to their deserts.

No. 2.

Extract from a letter from C. Macsween, Esq., Secretary to Government, to the Sudder Board of Revenue, respecting the Sudder Board's proposed new Sale Law: dated 26th August, 1833.

11th. In regard to the practice mentioned by the Presidency Sudder Board of Revenue, of defaulting Zemindars allowing their Estates to be brought to sale for arrears of Revenue, and purchasing the Estates themselves in a fictitious name, it is understood to be resorted to, only by Zemindars who have recently acquired and consequently possess a large proprietary interest in their Estates. The main object of the practice is to get rid of existing leases, and to obtain an immediate increase of rental by a fraudulent application of the Regulation which annuls the leases of Zemindars when their Estates are sold for arrears of Revenue; a Regulation, the existence of which not only operates perniciously by inducing the practice adverted to, but opposes a complete bar to agricultural improvement, by depriving leaseholders of all security in the stability of their leases.

Bengal Rev. Cons. 10th Nov. 1834, No. 96.

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* To obviate the objection which may be made to this suggestion on account of the uncertainty that would attend the decisions of the Courts in such suits, it might be enacted that leases shall be held to be collusive and adjudged to be annulled by the Courts, if the rent which they stipulate for be less than the average rent paid for the land included in them during the three years immediately preceding their date, as exhibited in the village accounts required by Regulation XII. 1817, or any other Regulation in force, to be recorded in the Office of the Pergunnah Canoongoe or other Pergunnah office of account.

It might be further enacted that leases shall be liable to be annulled by the Revenue Authorities after the expiration of 20 years from their date, for whatever period they may have been granted, in the event of the Estate in which the land leased is situated being held khas or let to farm for the recovery of an arrear of public revenue.

(Signed) A. Ross.

12th. It occurs to His Lordship in Council that it may be expedient to declare that leases granted by Zemindars or other landholders empowered to grant them, should be held valid and not liable to be annulled, until adjudged to be collusive by a decree of a Court of Justice passed in a regular suit; and that leases shall be held by the Courts to be collusive and annulled as such, if the rent which they stipulate for be less than the average rent paid for the land included in them during the three years immediately preceding their date. It may be expedient also, in the case of an Estate being held khas or let to farm for the recovery of an arrear of Revenue, to empower the Governor General in Council to annul any leases granted by the defaulter, that the Sudder Boards of Revenue, after full inquiry, may deem to be collusive and injurious to the public Revenue; the order of Government in such cases to be final, and not liable to be interfered with by any Court of Justice.

No. 3.

Extract from a letter from G. A. Bushby, Esq., Secretary to the Sudder Board of Revenue at Calcutta, to the Secretary to Government, Revenue Department, respecting the Board's proposed new Sale Law: dated the 19th September, 1834.

48. In respect to the prohibition of the annulment of Leases by Auction Purchasers, except after obtaining a decree in a regular suit, the Board are of opinion that until the Local Judicature be made everywhere adequate to the wants of society, the proposed restriction on the resumption of under-tenures would be highly unjust to the present proprietors, and full of risk to the Government interests; inasmuch as it would greatly depreciate the value of the proprietary right which the Collector sells for the recovery of a balance of Revenue, and seriously obstruct the realization of the current resources. They are not, however, insensible to the superior protection and encouragement which would be afforded to agriculture from the rules suggested by Government, on a comparison with the provision contained in Section XXXI. of Regulation XI. 1822, which they have already represented to be a dead letter; and the Government alone will be able to judge when

Bengal Rev. Cons. 10th Nov. 1834, No. 120.

and by what means they can be carried into effect without peril to the Revenue. The Junior Member is of opinion that the Rule is susceptible of much modification, without in the least endangering the interests of Government. He thinks that all Leases should not be indiscriminately voided by the act of sale of the superior holder's rights, as a general rule; but that the power vested in the purchaser to set aside such Leases should be restricted to cases in which the engagements contracted between the late proprietor of the lands and his under-tenants shall have originated in collusion or fraud, and interfere with the rights of the State. The present Rule not only, as observed by Government, presents a serious obstruction to agricultural improvement, but enables a fraudulent Zemindar to profit by his own wrong. The Senior Member is persuaded that the modification of the present rule proposed by his colleague would lead to intestine disputes, very destructive of the prosperity of an Estate, and to an increase of litigation, for the prompt adjudication of which there exists no means. What would be the excessive mischief if these cases were not promptly investigated and decided, is too evident to need illustration.

Mr. Bird.

Mr. Pattle.

49. It would be necessary, however, to enact a strict law for the registration of Leases, that purchasers at public sales may know the probable value of what they are buying. The Board propose to address Government separately on the subject of the Registry of Deeds, having before them a note from their late Acting Secretary, on the general question and benefits of a Public Register of all transactions connected with real property.

Mr. R. D. Mangles.

No. 4.

Extracts from a letter from E. Currie Esq., Officiating Secretary to the Sudder Board of Revenue, to F. J. Halliday, Esq., Officiating Secretary to the Government of Bengal, transmitting the Draft of a new Sale Law: dated 13*th March,* 1838.

61st. The case of a mortgagee, and not less so of an under-tenant, is in the present Law frequently hard. If a Zemindar mortgages his Estate, and forthwith throws it into balance, and brings it to sale, the mortgagee is abso-

Leg. Cons. 10th Feb. 1840, No. 8.

without remedy. If a Zemindar do the same thing after lettir whole Estate, or any portion of it in farm, for a consideratior ceived, and after the farmer has perhaps expended capital on his farm, no efficient remedy exists. In either case, the party about to be aggrieved may pay in the balance, but this can hardly be his interest, under any circumstances, since the payment so made will never be put down by the Collector to any other than the credit of the defaulting Zemindar.

62nd. It was suggested to the Board, by your letter No. 247, of 21st February, 1837, para. 5, that they should provide for these cases by allowing the mortgagee or under-tenant a right of immediate entry, on payment of the balance, restoring the Estate to the Zemindar on his discharging the debt.

63rd. But to this plan some important objections presented themselves. Possession of an Estate, especially when enforced to the detriment of an opposing Zemindar, is or might easily be made useless, or at least of little comparative value, unless the power of annulling under-tenures were added. But to allow under-tenures to be annulled subject to re-entry and of course re-annulment by the Zemindar, and this as often as the Estate might be in balance, could not but be detrimental to agriculture, and destructive of the security of property, and the investment of capital.

64th. Again such a provision might enable a fraudulent Zemindar to evade the just demands of many creditors, by colluding with a fictitious mortgagee, and giving him, for an unreal consideration, possession of the Estate.

65th. As regards under-tenants, too, the Board observe that the privilege proposed for them would render them in a great measure independent of their landlords, and even encourage them, especially when holding the entire Estate, to set the Zemindars at defiance, and perhaps to withhold their rents at critical times, for the express purpose of throwing the Mehal into arrear, and obtaining entry by payment of the balances due in consequence of their own acts. And to enable the farmers to defy their landlords, even when making just claims, which it was much to be feared would result from the alteration in question, would be, in the Board's opinion, rather more mischievous than to allow a landlord to defy his tenant, which was the mischief intended to be obviated by the suggested innovation.

66th. The only safe means of obviating this and similar mischiefs, seems to be to allow any person whatever to pay in a balance of Re-

venue due upon a particular Mehal, whenever it may be the interest of such person to save the Mehal from sale, and in order to ensure to the payer in such case all equitable advantage from his act of payment to cause an acknowledgment of payment to be granted in such cases, in such a shape and form as will be, in case of need, legal evidence of the fact and mode of payment in any Court of Justice.

67th. Under this rule, a mortgagee might pay the balance, and through the evidence of his payment afforded by the prescribed acknowledgment, recover the sum paid with interest together with the amount due on the mortgage; which he would of course lose no time in foreclosing; and a tenant, in like manner, might pay off a balance of Revenue due by his landlord to Government, and produce the acknowledgment as a set-off in case of an action against him by the landlord to recover rent.

68th. And in fact, it is difficult to suppose any probable case in which the proposed law will not give an equitable and safe remedy.

* * * * *

95th. The Board have already stated that considerable confusion and difficulty is occasioned by the obscurity of the laws regarding the rights acquired by a purchaser at auction sale, and the consequences to the under-tenants, or, at least, by the difference of construction which has obtained in respect to those laws. The proposed Draft, on this head, goes chiefly to simplify and explain the intent and meaning of the present law.

96th. But as the Board's construction of the existing law is opposed in some important particulars to that frequently maintained, it is proper to show, as concisely as possible, the grounds on which it is founded.

97th. The first enactment on the subject is the following in Regulation XLIV. 1793:—

Section V.—"Whenever the whole or a portion of the lands of any "Zemindar, independent Talookdar, or other actual proprietor of land "shall be disposed of at public sale for the discharge of arrears of the "public assessment, all engagements which such proprietor shall have "contracted with dependent Talookdars, whose talooks may be situated in "the lands sold, as also all leases to under-farmers, and pottahs to ryots, "for the cultivation of the whole or any part of such lands, (with the "exception of the engagments, pottahs, and leases, specified in Sections "VII. and VIII.,) shall stand cancelled from the day of sale, and the "purchaser or purchasers of the lands shall be at liberty to collect from

dependent talookdars, and from the ryots or cultivators of the lands let in farm, and the lands not farmed, whatever the former proprietor would have been entitled to demand according to the established usages and rates of the pergunnah or district in which such lands may be situated, had the engagements so cancelled never existed.

VI. "Nothing contained in this Regulation shall be construed to "prohibit any Zemindar, independent Talookdar, or other actual pro- "prietor of land, selling, giving, or otherwise disposing of any part of his "lands as a dependent talook.

VII. "Nor to authorize the assessment of any increase upon the "lands of such dependent Talookdars as were exempted from any "increase of assessment at the forming of the Decennial Settlement, in "virtue of the prohibition contained in Clause 1st, Section LI. Regula- "tion VIII. 1793. The revenue payable by such dependent Talookdars "is declared fixed for ever, and their lands are accordingly to be rated at "such fixed assessment in all divisions of the Estate in which their "talooks are included."

98th. Upon this it is important to remark, that nothing like ousting or disposing of the "Talookdars and ryots," was contemplated. Their *engagements* were cancelled, and the Zemindar was at liberty to collect *from them* whatever the former proprietor would have been entitled to collect. This obviously implies that the "Talookdars and ryots" were to remain in possession, an inference which is, if necessary, strengthened by the difference observable in the mode of treating "under-farmers," of whose tenures it is expressly said that the new Zemindar might collect, not from the under-farmers, which would be the analogous mode of writing with that used for Talookdars, but "from the ryots and cul- "tivators of the lands let in farm:" *i. e. farmers* were to be ejected; Talookdars and ryots were to be *held in possession*, subject to enhancement of rent.

99th. But to this enhancement there was an exception in favor of "such dependent talookdars as were exempted "from any increase of assessment at the forming "of the Decennial Settlement, in virtue of Section LI. Regulation VIII. "1793." It is remarkable that there is no express exemption in favor of Istimrardars, as mentioned in Sections XIX. and XLIX. Regulation VIII. 1793. The spirit however of the two laws taken together with

Section VII.

Clause 5, Section XXIX. Regulation VII. 1799, clearly excepts the Istimrardars from enhancement after a sale.

100th. Thus by the expression and spirit of the laws of 1793, a sale for arrears of revenue had the following effect upon the different sorts of tenures below enumerated :—

1*stly*. *Istimrardars* were left unmolested, liable to no increase, and secure from dispossession.

2*ndly*. *Talooks existing at the settlement, which were not proved at that time, or subsequently, to be liable to increase as provided in Section LI. Regulation VIII.* 1793, were left as they stood before the sale, *i. e.*, the proprietors were not liable to dispossession, and subject to no enhancement except upon regular suit by the auction purchaser to *prove* his title to enhance their rents.

3*rdly*. *Talooks existing at the Decennial Settlement, which had been proved liable to increase in the manner laid down in Section LI. Regulation VIII.* 1793, were liable to enhancement by the auction purchaser, but not to dispossession of the Talookdar.

4*thly*. *Talooks created since the Decennial Settlement* were liable to enhancement by the auction purchaser, but *not* to dispossession of the Talookdar. They were, in fact, precisely in the same predicament with the third class.

5*thly*. *Farmers holding under-leases made since the Decennial Settlement* were liable to immediate dispossession.

6*thly*. *Ryots and cultivators of the soil holding with or without engagements* were liable to enhancement, but not to dispossession.

7*thly*. *Holders of leases for a term of years, or in perpetuity, granted for the erection of dwelling-houses, or buildings for manufactures, or gardens or offices for such buildings*,* were liable neither to enhancement nor dispossession.

* Section VIII. Regulation XLIV. 1793.

101st. To this exposition, which appears to the Board obvious and indisputable, they solicit particular attention, because, as will be hereafter shown, it has been not only disputed, but absolutely contradicted and nullified by very high authority.

102nd. In 1798 a new power was given to purchasers, with regard to the above tenures, (except the first, second and seventh classes,) and this is a very important one, in the following terms :—

"But in cases of public sales for arrears of the public Revenue the "purchaser may, without "any previous application to "the Dewanny Adawlut, "eject any of the under-"renters whose leases are "annulled by Section V. "Regulation XLIV. 1793, "*and who may decline the* "*renewal of them* on such "terms as the purchaser by "the above Regulation and "by Section VII. Regulation "IV. 1794,* is authorized to "require from them."

Section VII.—The rules in the preceding Section are to be considered applicable not only to the pottahs which the ryots are entitled to demand in the first instance, under Regulation VIII. 1793, but also to the renewal of pottahs which may expire or become cancelled under Regulation XLIV. 1793, and to remove all doubt regarding the rates at which the ryots shall be entitled to have such pottahs renewed, it is declared, that no Proprietor or Farmer of land, or any other person, shall require ryots, whose pottahs may expire or become cancelled under the last mentioned Regulation, to take out new pottahs at higher rates than the established rates of the Pergunnah for lands of the same quality and description, but that ryots shall be entitled to have such pottahs renewed at the established rates, upon making application for that purpose to the person by whom their pottahs are to be granted, in the same manner as they are entitled to demand pottahs in the first instance by Regulation VIII. 1793.

103rd. Up to this time there was no clear rule according to which the purchaser at an auction sale might proceed to demand enhanced rent from tenants liable to enhancement. Accordingly by Section VIII. Regulation V. 1812, it was provided that a "deduction shall be made "from the gross rent at the rate of ten per cent. for the talookdar's "profit or income, over and above a reasonable allowance for the "charges of collection according to the extent of the talook."

104th. It was also laid down that the enhanced demand could only be made on or before the month of Jeth, and in a prescribed and formal manner.

105th. This Law in no degree interfered with, although it regulated, the rights previously possessed: a purchaser might enhance the rents of the under-tenants in classes 3, 4 and 6 (para. 100) and eject them under Clause 5, Section XXIX., Regulation VII. 1799, if they refused to agree to his terms, but those terms were henceforth to be according to a fixed rule, and the demand was to take place at a given time of the year.*

* An exception was made as to holders of collusive tenures who on proof to that effect in a summary suit might be ejected at any time of the year, Section IV., Regulation V. 1812.

106th. But when Regulation VIII. 1819 was enacted, a very different view was taken of the Laws above quoted, and the preamble to that Regulation shows clearly that its framers supposed the Law to give a purchaser a right of immediate ejectment, instead of a right conditional upon acceptance or non-acceptance of terms formally offered, which it has been explained was all that the Regulations had hitherto bestowed upon an auction purchaser; and Section II. of Regulation

VIII. 1819, expressly quotes Section V., Regulation XLIV. [illegible] as an authority for "cancelling of *tenures*" after a sale, t[illegible] as already shown, Regulation XLIV. 1793, only cancelled *engagements* and by no means warranted the cancelling of *tenures*, which amounts in fact to dispossession and ejectment.

107th. The declaration, however, of the old law, which Regulation VIII. 1819 professed to contain, seems to have been at a later period, and in a much more important and effectual manner, taken as the correct one, for the next Regulation on the subject (Regulation XI. 1822) repeats (and almost in the same words) the questionable exposition alluded to, and even extends and amplifies its effects.

108th. It was now declared* that "the act of sale transfers to the "purchaser all the property "and privileges which the "engaging party possessed, "and exercised at the time "of settlement, free from any "accidents or incumbrances "that may subsequently have "been imposed or have super-"vened thereupon, &c. &c.," and again, "In pursuance "of the *principle* of holding "the Estate of a defaulter "answerable for the Revenue "in the state in which it "stood at the time the settle-"ment was concluded, all "tenures which may have "originated with the default-"er, or his predecessors, being Representatives or Assignees of the "original engager, as well as all tenures, &c. &c., shall be liable to be "avoided and *annulled* by the purchaser at the sale, subject only to such "conditions of renewal as attached to the tenure at the time of settle-"ment aforesaid."

* Section XXIX., Regulation XI. 1822.
Section XXX.—In pursuance of the principle of holding the Estate of a defaulter answerable for the punctual realization of the Government Revenue in the state in which it stood at the time the settlement was concluded, (at which time by the dissolution of its previous engagements, Government must be considered to resume all rights possessed on the acquisition of the country, save where otherwise especially provided,) all tenures which may have originated with the defaulter or his predecessors, being Representatives or Assignees of the original engager, as well as all agreements with ryots or the like settled or credited by the first engager or his representatives, subsequently to the settlement, as well as all ter-es which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, shall be liable to be avoided and annulled by the purchaser of the Estate or Mehal, at a sale for arrears due on account of it, subject only to such conditions of renewal as attached to the tenure at the time of settlement aforesaid, saving always and except *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect.

109th. This power of *avoiding and annulling* under-tenures is subsequently said to be "indispensable for the security of the Public "Revenue," and to "*have been* always and uniformly acted upon as a "fundamental principle of the Revenue system of this Presidency."

h. The fact, in short, of the full power given by a sale to auction sers to *annul tenures* (not leases only) and eject tenants, is taken pletely for granted in Regulation XI. 1822, so much so as hardly ding to be *enacted,* but rather announced as an undeniable axiom, and it is remarkable as an additional proof of the construction now given to the old laws, that the only law which *did* give the power (under certain conditions) of ejecting tenants, (Clause 5, Section XXIX., Regulation VII. 1799) was repealed by Regulation XI. 1822 and not *re-enacted.*

111th. There is, however, one point in which Regulation XI. 1822 adheres closely to the old laws, as respects the position of under-tenures. But as this adherence goes to separate the cases of two kinds of tenures which, under the laws of the Perpetual Settlement, were similarly situated, and as, moreover, it goes to limit the powers of auction purchasers, though the whole object of Regulation XI. 1822 was to increase them; it may be very reasonably presumed to have been an oversight. It has been stated that under the old laws dependent Talooks, which existed before the Perpetual Settlement, not being those protected by Section VII., Regulation XLIV. 1793, and dependent Talooks created subsequently to the Settlement, were placed in the same predicament, *i. e.* they were liable to enhancement of rent, but not to ejectment, unless the enhanced rent were withheld. Now Section XXX. of Regulation XI. 1822 gives the purchaser the power of ejecting the tenants, whose tenures may have originated with the original engager, or his representatives, *i. e.* Talooks created since the Settlement; but provides at the same time that the purchaser shall succeed to the rights of the *original engager at the time of Settlement,* and that annulment of tenures, which the original engager under the terms of his settlement might set aside or alter, shall be "*sub-*"*ject to such conditions of renewal as attached to those tenures at the time* "*of settlement aforesaid:*" a condition which clearly entitles to renewal the holder of a dependent Talook existing at the time of Settlement, not protected from enhancement by Section VII., Regulation XLIV. 1793, as above stated, and belonging to class 3, para. 100; that is to say, Regulation XXII. found the two descriptions of tenure (class 3 and 4) in one and the same position—it left them very differently situated. Both were liable, previous to Regulation XI. 1822, to enhancement only; after Regulation XI. 1822, the one was in the same position, but for the other was added liability to ejectment.

112th. This must, the Board imagine, have been an oversight.

113th. So far Regulation XI. 1822, though, as the Board erroneously worded as to the meaning and intent of former lations, was at any rate clear enough in its own purport. It mistake the object of the old laws, but could hardly be itself mi by others.

114th. Another Section,* however, was so worded as to cast a doubt upon all that had preceded, and to raise up difficulties and contradictions which have existed more or less ever since. "The above rules," it was provided, "shall "not be construed to entitle the purchasers of land at public sales to "disturb the possession of any village Zemindar, Putteedar, *Mofussil* "*Talookdar*, or other person having an hereditary transferable property "in the land, or in the rents thereof, not being one of the proprietors "party to the engagements of settlement, or his representative."

* Section XXXII.

115th. This Section certainly bears out in a *considerable* degree the construction given to it in many instances, that by its operation dependent holders of any description, who may have purchased a proprietary right in their tenures, or the rents thereof, are secured from all the effects of a sale for arrears of Revenue. And as the under-tenants, almost down to the very cultivators of the soil, do in many parts of the Lower Provinces purchase a hereditary right in their tenures, the consequence of this Section, so construed, has been a varying and contradictory execution of the law, an uncertainty on all hands as to the position of under-tenants, difficulty and imperfection in giving and obtaining possession of Estates purchased at public sales for arrears of Revenue, and generally distrust, misunderstanding, litigation, and discontent.

116th. Indeed it may be unreservedly asserted, that though the Regulation in question, by its XXXI. Section, gives apparently much greater power to auction purchasers than they ever possessed before, yet in consequence of the contradiction implied in Section XXXII., the real and practical effect of this law has been to narrow the benefits of a purchase, and impede the collection of the Revenue.

117th. The construction of this Section, which has been stated to be the usual one, has been thus remarked on by the Board on a former occasion :—

118th. "It has on some recent occasions been held that dependent "Talookdars, created since the Settlement, came within the description "of persons protected by the above proviso.

9th. " The Board, however, entertain no doubt whatever that this ion is incorrect.

10th. " It will be sufficient to attend carefully to the wording of the " Section, to be satisfied that the persons designed to be protected are par- " ties possessing a full and fixed right of what is termed, in the language " of our Regulations, 'property' in the land, or its rents; that is, parties " professing such a right as that it is possible that they might be 'pro- " 'prietors, parties to the engagement of settlement,' while it needs not " be stated that it is very certain that dependent Talookdars never " could be parties to an engagement of settlement, and it thence " follows that they are not of the class of persons to whom the Section " was intended to apply.

121st. " The interest of dependent Talookdars, as before mentioned " in para. 2nd of this letter, has been defined by Section VII. Regu- " lation VIII. 1793, to be only a 'leasehold' and not a proprietary " 'interest.'

122nd. " The Section in question of the Regulation of 1822 points " evidently to the case of persons having fixed " properties in Mehals, though they may not in " virtue of that right have engaged with Govern- " ment for the Revenue, such as the village Ze- " mindars, Putteedars, &c., of the Upper Pro- " vinces. The meaning will be more plainly seen " on comparing Section XXXII. with Section " XVI. of the Regulation, where the same class " of persons are spoken of as '*Proprietors*,' '*Put-* " '*teedars*' '*village Zemindars*' or the like, who " at the time of the Settlement held distinct " properties,* though paying their revenue " through the recorded Malgoozar."

* Section XXXII. Regulation XI. 1822, would however protect *Talookdars, the actual proprietors* of the lands composing their Talooks " who did not apply for " separation within the " time limited by Section " XIV. Regulation I. " 1801." That Section declares that such Talookdars so neglecting to apply should lose their right to separation, though "*in other respects*" the rights of the Talookdars were not to be in any degree affected.

123rd. This construction of Section XXXII. is entirely consistent with the manner in which the mention of the proviso alluded to is introduced in it. There is nowhere in the previous Sections, a hint of there being any exception to, or limitation of, the general and indispensable principle declared in them, being to be found in this Section. On the contrary, that general principle is stated in terms the most express and unqualified, and, as has been remarked, as if it were an absolute and necessary consequence of the act of sale for arrears. And Section XXXII. is added, not as *exceptive* but as *precautionary*, to prevent the

misapplication of the powers given by the preceding Sections to a purchaser over tenures created since the Settlement, to tenures of property which, though situated within the Estate sold, are not derivative entirely from the party who originally entered into engagements at the time of Settlement, or from any of his successors down to the defaulting engager, and are, therefore, not involved in the act of sale of the defaulter's estate or interest.

124th. The Board need not pursue the argument further upon the wording of the law, or dwell in addition to the considerations already stated upon the great improbability, to say the least of it, that it could be meant by Section XXXII. to nullify, in regard to one great class of dependent tenures, the rule which is broadly laid down in Section XXX. in respect to *all* dependent tenures created since the Settlement, or to render nugatory and useless the special power of protecting such dependent tenures, which is conferred by Section XXXI., in so careful and guarded a manner on the Government alone. They think, however, that it may be satisfactory to state here, in the words of the framer of the Regulation under consideration, the views by which he was guided in drawing this part of it. The following is an extract from a note recorded on the proceedings of Government, under date the 1st November, 1822, by Mr. Secretary Mackenzie, in submitting for approval the final Draft of Regulation XI. 1822, to which the Board have been permitted to refer:

125th. "It may, however, be proper to observe that this Regulation "contains a very important concession to the inferior proprietary "classes, and one which the auction purchasers will be apt, though "erroneously, to consider as an encroachment on the rights acquired by "them, and that is the *declaration* that their property is limited to what "may have been that of the *former engager* at the *time of Settlement*. "This doubtless is the equity of the case, and is likewise the spirit of "the former rules on the subject, but as the point was never declared "heretofore with sufficient precision, the auction purchasers have been "encouraged to assert that the *entire* and absolute property became "theirs by purchase."

126th. "Thus it will be seen that the anxiety was to preclude *more* "from being held to be conveyed to a purchaser at a sale than the "rights of the first engager at the Settlement, but that it was not "sought to deprive the purchaser, to any extent, of any of those rights."

127th. The Regulations in force are further defective, inasmuch as

do not distinctly provide for the speedy adjudication of questions between purchasers and their tenants, arising out of the rules d; and as no possession can be called complete until these cases are settled, a great additional difficulty has been opposed to auction purchasers in their attempts to obtain possession of their purchases.

128th. In the Draft now submitted, the Board have endeavoured to reduce the law to its original purport as it stood in 1793; to obviate contradictions, errors, and misconstructions; and to provide clearly for the speedy decision of such disputes as always arise between a purchaser and his under-tenants relative to their respective rights under the law.

129th. The mode in which this has been effected will be clearly understood from the following compendious statement of the liabilities of the different sorts of tenures, consequent upon a sale previous to the enactment of Regulation XI. 1822, and subsequent to that Regulation, and also their proposed liabilities under the present Draft.

Tenure.	Position and Liabilities previous to Regulation XI. 1822.	Position and Liabilities subsequent to Regulation XI. 1822.	Position and Liabilities by proposed Draft.
Istimrardars. ...	Not liable to dispossession or enhancement. In case of demand of increase by the new purchaser and resort to Law the burthen of plaint to be on the purchaser, but that of proof (of Istimraree tenure) to be on the tenant. Suit to be tried as a regular suit in a Civil Court.	The same.	The same, with this alteration, that the suit (on the plaint of the purchaser) to be tried as a summary suit before the Collector.
2. Talooks existing at the Perpetual Settlement which were not proved at that time or subsequently to be liable to increase as provided in Section LI., Regulation VIII. 1793. ...	Not liable to enhancement, except upon proof (the burthen of which is on the purchaser), in a regular suit in a Civil Court that the tenure is liable to increase, for the reasons specified in Section LI., Regulation VIII. 1793. Not liable to dispossession.	The same.	The same, with this alteration, that in case of demand of increase by the purchaser and resort to Law, the case on the suit of the purchaser to be tried as a summary suit before the Collector, and the burthen of proof on the tenant, who must show that he belongs to this class.
3. Talooks existing at the Perpetual Settlement which have been proved liable to increase in the manner laid down in Section LI, Regulation VIII. 1793.... ...	Liable to enhancement on or before Jeth by the auction purchaser summarily, but not to dispossession, except on refusal to engage at the terms proposed under Clause 5, Section XXIX. Regulation VII. 1799.	Liable to enhancement by the auction purchaser summarily, but (in consequence of the repeal of Clause 5, Section XXIX., Regulation VII. 1799) not liable to dispossession in case of refusal, but only on default proved in a summary suit under the Clauses of Section XV. Regulation VII. 1799. Note, however, that Section X. Regulation VIII. 1831, which prohibits the hearing of summary suits for enhancement, completely nullifies the law in respect to this class of tenants.	Liable to enhancement summarily on or before Jeth by the auction purchaser, but not to dispossession, except upon default of payment of enhanced rent demanded or adjudged, and after a summary suit before the Collector, *i. e.* precisely as the foregoing.

Tenure.	Position and Liabilities previous to Regulation XI. 1822.	Position and Liabilities subsequent to Regulation XI. 1822.	Position and Liabilities by proposed Draft.
4. Talooks created since the Perpetual Settlement.... ...	Liable to enhancement on or before Jeth by the Auction purchaser summarily, but not to dispossession, except on refusal to engage on the terms proposed under Clause 5, Section XXIX. Regulation VII. 1799; they were in fact situated precisely as the foregoing.	Annihilated by the act of Sale, and the holders liable to be forthwith ejected and dispossessed by the purchaser without any limit or condition.	Liable to enhancement on or before the month of Jeth.
5. Farmers holding under leases made since the Decennial Settlement.... ...	Liable to dispossession on or before the month of Jeth.	Annihilated by the act of Sale, and the holders liable to be forthwith ejected and dispossessed by the purchaser without any limit or condition.	Liable to dispossession on or before the month of Jeth.
6. Ryots and Cultivators of the soil, including Koodkasht and Kudeemee Ryots.	Liable to enhancement on or before the month of Jeth by the auction purchaser summarily, but not to dispossession, except on refusal to engage on the terms proposed under Clause 5, Section XXIX. Regulation VII. 1799, precisely as classes 3 and 4.	Annihilated by the act of Sale, and the holders liable to be forthwith ejected and dispossessed by the purchaser without limit or condition, except Koodkasht and Kudeemee Ryots, who need not be called upon to pay a higher rent to the purchaser than was demandable by the former proprietor, and cannot be ejected.	Liable to enhancement summarily on or before Jeth by the purchaser, but not to dispossession, except on default of payment of enhanced rent demanded or adjudged, and after a summary suit before the Collector, precisely as classes 3 and 4.
7. Holders of leases for a term of years or in perpetuity, granted for the erection of dwelling-houses or buildings for manufactures or gardens or offices for such buildings. ...	Not liable to enhancement or dispossession.	The same.	The same.

* NOTE.—The above relate to *bonâ fide* holdings of the descriptions quoted. Collusive tenants under all three systems may be ousted at any time of the year, after proof of collusion in a summary suit; which suit, however, according to the proposed Draft, must be filed within two years from the completion of the sale.

No. 5.

Extract from the Sudder Board's Draft of a new Sale Law, submitted to Government with Mr. Officiating Secretary Currie's letter, (Extra No. 4) : dated the 13th March, 1838.

26th. If the Estate sold be that on which the arrear was due, the act of sale shall render liable to enhancement of rent in the manner hereinafter provided, all under-tenures whatever within the Estate sold, with the following exceptions, *viz.* Istimraree tenures of the nature described in Section XIX. Regulation VIII. of 1793, and Talooks existing at the time of the Decennial Settlement, and not at the time or subsequently proved to be liable to increase of assessment in the manner and for the reasons specified in Section LI. Regulation VIII. of 1793; and also all tenures held under *bonâ fide* leases, temporary or perpetual, for the erection of dwelling-houses, manufactories, or offices for the same, or for gardens, tanks, canals, or like purposes, all of which three descriptions of tenure shall continue in force and effect, so long as the stipulated rent is paid; and in the case of the last-mentioned tenure, so long as the lease continues, if that be temporary, and so long as the land is appropriated to the purpose or purposes specified.

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Provided always that in the case any Auction purchaser shall proceed by summary suit against any tenant of the description above excepted for increase of rent, on the plea that such tenant does not in fact belong to the excepted class, the burthen of proof of right to exception and exemption from increase of rent shall be on the tenant sued.

27th. It is prescribed by Sections IX., X. and XI. Regulation V. 1812 that no rents of under-tenants shall be liable to enhancement during the current Bengal or Fussily year, unless written engagements for enhanced rent have been entered into by the parties, or a formal written notice have been served on the tenant, on or before the month of Jeth, notifying the specific rent under the landholder's right of enhancing it to which he will be subject for the Bengal or Fussily year, and that in all practicable cases this notice shall be served personally on the tenant; but that if he abscond, or conceal himself, so that it cannot be served personally upon him, it shall, in the presence of two or more respectable witnesses, be affixed at his usual place of residence,

latter process shall, in such case, be deemed and taken to be *recent service of the notification in question.*

28th. *In modification of Section X. Regulation VIII. 1831, it is hereby declared that,* under the above limitations and conditions, it shall be competent to purchasers of lands sold for the realization of arrears accruing on them at any time within two years from the date of sale, to enforce demands for enhancement of rent, against their under-tenants by distraint, or by summary suit under Regulation VIII. 1831, and Collectors, or other Officers duly empowered to try and determine such suit or suits succeeding distraint under Regulation V. 1812, shall, in cases in which the legality or justice of the demand may be disputed, summarily adjudicate between the parties, both as to the legality of the demand under Regulations VIII. and XLIV. 1793, or other Regulations in force regarding the rights of under-tenants to hold their lands exempt from enhancement of rent, and as to the justice and fairness of the demand as regards the extent and quality of the land comprising the tenure, and the custom of the District or Pergunnah with respect to rents. Provided, however, that such decisions shall be contested only by regular suits in the Civil Courts.

29th. Should a purchaser of a Mehal by Auction for an arrear of Revenue, be of opinion that any tenures in the Estate he has thus purchased are fraudulent, or fictitious, or held collusively at an inadequate Jumma, he shall be competent to sue for the ejectment of the tenants thereof at any time within two years from the completion of the purchase, and such suits shall be tried by the Collector as summary suits, in the manner laid down in Regulation VIII. 1831; and if the tenure be proved to the Collector's satisfaction to be fraudulent or fictitious as aforesaid, he shall pass a decree for the ejectment of the tenant of the same, placing the plaintiff in full possession of the tenure. With exception to the fraudulent and fictitious tenants abovementioned, no under-tenant in an Estate sold for the recovery of arrears of Revenue shall be liable to be dispossessed by the purchaser, except by a decree in a regular suit, so long as he may pay the rent of his lands, either according to engagements with the said purchaser or agreeably to the notice for enhancement served upon him, or according to the rate fixed by the Collector's decision in a summary suit tried as above prescribed. Provided always, that every purchaser aforesaid (and all other owners and managers of land) shall be authorized and empowered to oust at their own discretion, on their own responsibility and without applica-

tion to the Courts, all tenants holding under-written temporary or engagements, on the expiration of such leases or engagements.

No. 6.

Minute by H. Walters, Esq., Temporary Member of the Sudder Board of Revenue, Calcutta, respecting the Board's proposed new Sale Law: dated 29th September, 1837.

1st. With respect to separable Talooks, Sections IX. and X. Regulation I. 1793, and Section XIV. Regulation I. 1801 distinctly recognize the right of a Zemindar to dispose of his proprietary interest in the whole or any part of his Estate, by sale, gift or otherwise. But it is required that all such transfers be notified to the Collector of the Zillah, that the fixed Jumma assessed upon the whole Estate may be apportioned on the several shares which will thenceforward form distinct Estates, and it is further clearly enacted that if any Zemindar shall have disposed of his proprietary rights in any portion of his Zemindaree, whether under the denomination of an independent Talook or otherwise, and the person to whom a portion of the Estate may have been so transferred shall have omitted to obtain a separate allotment of the public assessment thereon, such transfer, so far as it respects the rights of Government, must be considered *altogether invalid,* and if the land so privately transferred, but not separately assessed, shall subsequently be included in any sale for arrears of Revenue, the illicit and imperfect private transfer must be deemed to have been altogether *done away.* In such cases the lands transferred, until publicly registered and separately assessed, form part of an undivided Estate, and as such are liable to be sold for any arrear of Revenue which may be due from any part of the Estate. All tenures or holdings of the above nature formed *since* the Settlement, then, are absolutely void on a sale, and the purchaser will enter on *possession* of such lands just as he will do on possession of the lands remaining in the occupation of the late proprietor. So also any dependent Talooks or other holdings with hereditary transferable rights found in the possession of any proprietor "being a party to the engage-"ment of Settlement, or his representative," will be liable to absolute annulment on sale and the purchaser will be entitled to enter on pos-

Leg. Cons. 10th Feby. 1840, No. 10.

[redacted]on thereof. All Talooks therefore held by proprietors in the names of their relations and dependents will thus fall, *quoad* right of possession and *quoad* amount of rent, by sale of the principal Estate for arrears of Revenue, (See Section XXXII. Regulation II. 1822.)

Talooks, however, with a right of separation created anterior to the Settlement, the proprietors of which may have omitted to apply for and obtain separation, are declared to have forfeited their right to separation, though their interests, as explained in Section XIV. Regulation I. 1801, are in no other respect affected; such Talooks will therefore not be annihilated by sale, but will continue in possession of their owners as dependent Talooks, liable only to increase of rent by decree of Court.

It is necessary that the above should be distinctly stated in the new Law, and explained in the letter.

2nd. With respect to dependent Talooks, whatever construction the former Regulations may be open to a contrary effect, there can be no doubt that Section XXIX. Regulation II. 1822, is the *present* Law which rules the incidence of sale for arrears of Land Revenue on under-tenures, whether with or without right of transfer, &c.; and whatever may have been the practice of the Courts, founded on their own construction of that Section, there can, I think, on mature reflection, be as little doubt that the construction given to Secs. XXX., XXXI., XXXII. Regulation II. 1822, by the Board of Revenue, in their letter quoted by our Secretary in his draft, is the right interpretation, *viz.*, that on sale of an Estate for arrears of Revenue accruing thereon, all under-tenures of whatever description, created since the Decennial Settlement, are annulled entirely *quoad* the rent stipulated to be paid to the ousted proprietor, and *quoad* the possession or right of possession of the dependent tenure-holders.

I do maintain that when an auction purchaser is put in possession of his Estate, he has a right to enter on *bodily* possession, and dispose of, as to him may seem most to his own interests, all the lands contained in his purchase, not being lands held under tenures that were in existence when the Zemindars engaged with the Government at the Perpetual Settlement; and that with regard to all such existing tenures, he succeeds to and enjoys, and has a right to exercise, all the powers which the parties to the Settlement might have legally exercised at the period thereof, and no more nor less. This construction of the Law is clearly upheld and enforced by Regulation II. 1822, and the circumstances of the country convince me that, so far from repealing this Law, the Reve-

nue Authorities are, at the present time, bound to uphold it by every possible means, and further are bound to provide for it more effectual and easy application. The effects of a contrary course, it is easy to perceive, will be to embarrass more and more the due realization of the public Revenue, to divert the application of capital from the purchase of landed property, and from the improvement of Agriculture.

I will not go into a lengthened argument to prove the correctness of the above position, because it is acknowledged that Section XXX. Regulation II. 1822, which is the Law at present, clearly authorizes the ousting of all such dependent tenure-holders by an auction purchaser. I will however, observe that Section X. Regulation I. 1793, which sanctions the *creation* of such dependent Talooks, distinctly declares that the Jumma which may be stipulated to be paid by the dependent Talookdars shall not be entered upon the records of Government; that the transfer will not exempt such lands from being answerable for the payment of the public Revenue assessed upon the whole Estate, in the event of a sale, nor will it be allowed in any case to affect the *rights* and claims of Government any more than if it had never taken place.

Now I would wish to know how the principle of holding the Estate of a defaulter answerable for the Government Revenue in the state in which it stood at the time the Settlement was concluded, (Section XXX. Regulation II. 1822,) a principle which is clearly consistent with the Section above quoted, can be maintained, if a right to retain possession of tenures *created since* the Settlement is upheld with respect to such tenure-holders?

It is true that by the tenor of Section V. Regulation XLIV. 1793, and Section XXIX. Regulation VII. 1799, although the agreements entered into with dependent Talooks stand cancelled from the day of sale, the purchaser cannot eject the Talookdars so long as they may not decline the renewal of them on such terms as the purchaser is authorized to require of them. But these provisions are clearly confined to Talooks which were in existence at the period of the Settlement. Such Talookdars cannot be ousted so long as they consent to pay the proper rent demanded of them, though by Section XXIX. Regulation VII. 1799, even *such* Talookdars could be ousted by the Zemindars, without reference to the Courts, if they *refused* the terms offered them.

Talooks created *since* the Settlement, however, enjoy no such immunity. The only provision in fact made in favor of dependent Talooks created since the Settlement, is to be found in Section XXXI. Regulation II. 1822,

which the Governor General is authorized to revise such under-tenures, and the wording of the Section "who may have granted leases or other temporary or *permanent* assignment of his land for a *present money* consideration," &c., clearly shows that *all* transfers of proprietary right in Talooks, as well as all mere leasehold engagements *created since* the Settlement, are absolutely annihilated by sale for arrears, and the holder thereof liable to be ejected, *unless* specially reserved at the time of sale by order of the Governor General. Further, Section XIV. Regulation I. 1801 distinctly states that the rules regarding separable Talooks contained in Regulation VIII. 1793, were never meant to be applied to any new Talooks constituted since the period of the Decennial Settlement; and from the analogy of this express provision it may also further be deduced that none of the provisions relative to under-tenures existing at the time of the Settlement, as contained in the Regulation of 1793, are applicable to tenures subsequently created, *unless* so expressly declared in some subsequent Regulation.

The letter of Government to the Revenue Board, dated 15th December 1795, on the right construction of Regulation XLIV. 1793, must also be read with the same limitation, *viz.* as referring only to Talooks in existence at the period of the Settlement, and of the enactment of that Regulation; and it is agreed on all hands that the right of occupancy in such Talooks is not disturbed, but only the money engagement, by sale for arrears.

The term "Tenure" does not appear to have been used in the Regulations anterior to Regulation VIII. 1819. In Section II. it is enacted, "provided however that nothing herein contained shall be held to "*exempt* any *tenures* held under *engagement* from proprietors of Estates "paying Revenue to Government from the *liability* to be *cancelled* on "sale of the said Estates for arrears of the said Revenue, under the Rule "of Section V. Regulation XLIV. 1793, unless specifically exempted "from such liability by the Rule in question, or by any other specific "Rule of the Regulations in force."

Now whatever indefiniteness there may be in the application of the term in other places, it is evident that by the above Section the *tenure* itself, and not the money engagement only, is cancelled by sale.

In my opinion, therefore, the Secretary's draft, from paragraph 95 to 132, should be altered to meet the above construction; and Section XXVIII. to XXX. in the draft of the new Law be altered accordingly.

No. 7.

Extract from a letter from F. J. Halliday, Esq., Secretary to the Government of Bengal, to T. H. Maddock, Esq., Officiating Secretary to the Government of India, respecting the Sudder Board's proposed new Sale Law: dated the 10th July, 1838.

Sections XXVI., XXVII., XXVIII., XXIX. These Sections declare what are to be the consequences of a sale for the recovery of an arrear of Revenue to the under-tenures in the Estate sold.

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The following under-tenures are not to be in any way affected:—

1*st.* Istimraree tenures of the nature described in Section XIX., Regulation VIII. 1793.

2*nd.* Talooks existing at the time of the Decennial Settlement, and not at that time or subsequently proved to be liable to increase of Assessment, in the manner and for the reasons stated in Section LI. of Regulation VIII. of 1793.

3*rd.* Lands held under *bonâ fide* leases, temporary or perpetual, for the erection of dwelling-houses and manufactories, or for gardens, tanks, canals, and like purposes.

The under-tenures which *are* to be affected by a sale, are the following:

1*st.* Tenures created *malâ fide*, or collusively, after the conclusion of the Decennial Settlement.

2*nd.* Tenures created *bonâ fide* after the conclusion of the Decennial Settlement.

The *malâ fide*, or collusive tenures, are to be voidable *in toto*, and the holders are to be liable to ejectment. To this, His Honor sees no objection.

The *bonâ fide* tenures are to be affected *quoad* their rent only, which is to be liable to enhancement; the right to occupy and cultivate the land at an adequate rent continuing vested in the holders.

This consequence to an under-tenure, which confers not only a right to occupy in perpetuity the land included in it, but also a right to occupy the land at a rent fixed for perpetuity, is necessary to secure the Land Revenue from being deteriorated by the creation of under-tenures assessed with inadequate rents.

But a farm under a lease for a limited period, at a rent payable during such period, equal to what the lands included in the farm were capable of yielding when the lease was granted, is a *bonâ fide* tenure; and as such its rent will be liable under the proposed Act to enhancement.

This, the Deputy Governor considers objectionable; especially as the annulment of *bonâ fide* temporary leases is not necessary for securing the Revenue from deterioration. The great defect, His Honor thinks, of the Sale Law now in force, (Regulation XI. 1822,) is that it does not afford the security to leases of this description, which is essential to the improvement of the agriculture of the country; and a new Law which shall not remedy that defect will not be productive of much advantage; for while it remains unremedied, no intelligent farmer will employ his skill and capital on land, held under a lease which the lessor may at any time cause to be annulled.

As a remedy for the defect mentioned, the Deputy Governor would propose that it be enacted in the new Law, that it shall not be lawful for the purchaser of an Estate sold for an arrear of Revenue to annul a farming lease granted by the defaulting, or by a former proprietor, for a term not exceeding twenty years, and stipulating for the payment of an annual rent, not being less than the average rent realized from the lands in the three years immediately preceding the year in which the lease was granted.

By defining in the above manner the farming leases which it would not be lawful to annul, and by attaching a heavy penalty to the annulment of a lease coming within the definition given, every reasonable security would be afforded to the holders of fair leases, while auction purchasers, under the provisions of Sections XXVII. and XXVIII. of the proposed Act, would be competent, without application to a Court of Justice, to assess with adequate rent all lands in the Estates purchased by them held under unfair leases, *i. e.*, leases not coming within the definition given of a lease not lawfully annullable.

No. 8.

Extract from the Draft of a new Sale Law: read in Council on the 14*th October,* 1839.

XXXVI. And it is hereby enacted, that the purchaser of an Estate sold under this Act, for the recovery of arrears due from itself, in the Permanently Settled Districts of Bengal, Behar and Orissa, shall be entitled

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to enhance, in the manner prescribed in the Regulations, the rent of all under-tenures in the said Estate, with the following exceptions:

1*st*. Tenures which were held as *istimrarees* or *mokurreree*, at a fixed rent, more than 12 years before the Permanent Settlement.

2*ndly*. Tenures existing at the time of the Decennial Settlement, which have not been or may not be proved to be liable to increase of Assessment, on the grounds stated in Section LI. Regulation VIII. of 1793.

3*rdly*. Lands held by *koodkasht* or *kudeemee* ryots, having rights of occupancy at fixed rates.

4*thly*. Lands held under *bond fide* leases, temporary or perpetual, for the erection of dwelling-houses, or manufactories, and being so used, or for gardens, tanks, canals, or like purposes.

5*thly*. Farms granted in good faith by a former proprietor, for terms not exceeding 20 years, under written and duly registered leases, stipulating for the payment of an annual rent not less than the average net rent realized from lands of the same description in the vicinity during the three years immediately preceding the year in which the lease as aforesaid was granted.

Provided that nothing in this Section contained shall be held to authorize any such purchaser to enhance the rent of any Talookdar, ryot, or cultivator, beyond what the late proprietor would have been entitled to demand from the same, according to the established usages and rates of the Pergunnah or District, if no engagement had existed between them.

XXXVII. And it is hereby enacted, that in the event of any purchaser at public sale as aforesaid, proceeding against any tenant claiming to belong to one of the abovementioned classes, on the plea that the tenant does not really so belong, the burthen of proof that he does belong to an exempted class shall be on the tenants sued.

XXXVIII. And it is hereby enacted, that the purchaser of an Estate sold under this Act for the recovery of arrears due from itself, in Districts other than those mentioned in the last preceding Section, shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like, settled or credited by the first engager or his representatives, subsequently to the Settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been com-

potent to set aside, alter, or renew, saving always and except *bonâ fide* [illegible]es of ground for the erection of dwelling-houses, or buildings, or for [illegible]ces thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained, shall be construed to entitle any purchaser of land at a public sale to disturb the possession of any village *Zemindar*, *Putteedar*, *Mofussil Talookdar*, or other person having a hereditary transferable property in the land, or in the rents thereof, not being one of the Proprietors party to the engagement of settlement or his representative; nor to eject a *koodkásht*, *kudeemee ryot*, or resident and hereditary cultivator, having a prescriptive right of occupancy. Nor to demand a higher rate of rent from an under-tenant of either of the above descriptions, than was receivable by the former *Malgoozar*, saving and except in cases in which such under-tenants may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former *Malgoozars* from the old established rates, by special favor, or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the *Pergunnah*, *Mouzah*, or other local division, such under-tenants are liable to be called upon for any new Assessment, or other demand not interdicted by the Regulations of Government..

XXXIX. And it is hereby enacted, that the claims of purchasers, whether in regard to the enhancement of rent, or ejectment from tenure, under the provisions of Sections XXXVI. and XXXVIII. of this Act, shall be adjudicated only by the Civil Courts. Provided that nothing in this Section contained, shall prevent purchasers from suing their under-tenants for arrears of rent, by summary suit in the usual manner.

No. 9.

Extract from Remarks by Mr. F. J. Halliday, on the Draft of a new Sale Law: read in Council on the 14*th October*, 1839.

Section XXXVI. To this Section I have strong objections, and this seems the proper place to suggest the alteration to which I have alluded in my remark on Section I. Sale for arrears of Revenue is a great evil,

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though an unavoidable one. It is our duty to make the evil no greater than is absolutely necessary for the purpose for which sales are provided. Perhaps the greatest of all evils belonging to sales is the insecurity which they bring upon under-tenants of all descriptions, and the mischievous power of annoyance and interference and extortion, which they give to a new auction purchaser over his under-tenants. If we can ameliorate nothing else belonging to sales, we ought, at all events, to endeavour to amend this; for if ever any great improvement is to happen to this country, it must come by means of the introduction, as *under-tenants* of Zemindars, of men of skill, capital and enterprize. As the Law now is, (and the new Law will not much improve it,) no man of skill would or could have anything to do with under-tenures; at least no man could without great risk. Conceive, for instance, the contingency to a farmer for 20 years desirous of laying out, or perhaps having laid out, large capital on his farm, of being threatened (as he usually would be) with a suit at law by every new purchaser, and being put on his proof once every two or three years, or as often as a sale might take place; or conceive, what is still worse, the condition of poor and more defenceless tenants under such a system. Clearly no such interference should be permitted if it can be avoided.

Now the only reason which can at all justify the power given by Law to auction purchasers, and the effect produced by law after a sale on under-tenants, is the necessity of securing the Revenue of Government. So far, therefore, as the power and the effect are really necessary to this their legitimate object, the Law is defensible, but not a jot beyond this. If A. the present Zemindar of a Mehal paying 1,000 Rupees to Government, have by any means reduced the rents of his tenants from 2,000 Rupees to 800 Rupees, the Government Revenue is in peril, and the Law ought to be enforced in case of sale. But if from 2,000 Rupees he have reduced the rents to 1,500 Rupees, the Government Revenue may not thereby be emperilled, and the Law, *not* being wanted, ought not to have effect after a sale.

On the whole, the entire absence of bids at a sale, is a pretty fair proof that the Mehal cannot pay its jumma one year with another. Want of bids proves of course other things besides this; but, generally speaking, it may be safely taken to prove, that the receipts from the Mehal from some cause or other are likely to be less to a purchaser, than would enable him to meet the Government demand from year to year.

Whenever, therefore, there are no bids, or no bids equal to the balance, there can be but little reason to doubt that the Government Revenue from that Mehal is in peril; and that in the Mehal in which it occurs, the necessity *has* arisen for the otherwise unjustifiable interference with under-tenures, which at present takes place on all occasions of sale, whether the Revenue is in jeopardy or not.

The Decennial or Permanent Settlement was in each case a contract between the State and the Zemindar, and his heirs and assigns in perpetuity, and on failure of payment, sale was provided as a means of remedying the infringement of the contract, and of transferring the contract to new hands. But it appears never to have been expected that Mehals would be unsaleable, or that they would ever be found to produce at sale, a less price than would suffice to pay the whole balance; or so nearly the whole, that the remainder might always be realized by distraint on the defaulter.

It is clear, however, that in any case in which the putting up of a defaulter's Estate to sale for its balance, produces *no bids*, or no bids equal to the balance, the contract of the Decennial Settlement by that very circumstance is voided, and the Mehal may be made forthwith to return to the hands of the State, without any violation of the principles of the Decennial Settlement, or rather, in perfect accordance with them.

The real effect of such a course of Law is at present produced in practice by the clumsy expedient of bidding and buying on the part of Government, but there are some peculiar objections to this plan, and it would be far better that the same thing should be brought about in a simple manner by direct consequence of Law. I would enact, then, that no under-tenures of any description should be in any degree affected by the act of sale, and that the purchaser should succeed to the rights of his predecessor, whatever they might have been or might be, to be settled in case of dispute, like all other rights, *viz.* by suit in Court,—and

That, in the event of the bidding at any sale for arrears of Revenue not coming up to the balance due, the sale should be postponed until the next periodical sale, fixed as aforesaid: when, if the bidding should still fall short of the balance due, the contract be declared void, and the Mehal to have lapsed to Government, free from all incumbrances other than those existing at the time of the Decennial Settlement. *Provided*, however, that this shall not be held to autho-

rize the Government to enhance rents or otherwise disturb possession in

1*st.* Tenures which were held as *istimraree* or *mokurruree* at a fixed rent, more than twelve years before the Permanent Settlement.

2*nd.* Tenures existing at the time of the Decennial Settlement, and which have not been or may not be proved to be liable to increase of Assessment on the grounds stated in Section II. Regulation VIII. 1793.

3*rd.* Lands held by koodkasht or kudeemee ryots having rights of occupancy at fixed rates.

4*th.* Lands held under *bonâ fide* leases, temporary or perpetual, for the erection of dwelling-houses, and manufactories, and being so used, or for gardens, tanks, canals, or like purposes.

For the rest I am of opinion that the Government may be fairly and safely trusted to deal equitably and justly with all classes of tenants not included in the above exceptions.

As in Section XXXVII. of the Draft, I would enact that the burthen of proof of exemption under the above exceptions shall be on the tenant.

It is obvious that the security of under-tenants would be vastly increased by the alteration I propose. Instead of being liable to interruption and interference in every case of sale, they would incur that liability only when the Estate fell into the hands of Government, and they would incur this liability to interruption *only* from hands least of all likely to convert it into abuse, and a means of extortion.

I conceive that this alteration in the Law would remove the chief evil attendant upon sales of Estate for arrears of Revenue. The evil of disturbance to under-tenants would *never* happen, save when it was really indispensable for the security of the Government Revenue, and this is in fact the only case in which such an evil can be justified.

There can, I think, be no objection to this alteration of the Law on the score of injury to purchasers. Purchasers, who inquire before they buy, will give for their purchase no more than it is worth, and if this covers the balance, the object of Government will be attained. Purchasers, who buy without inquiry, are not much to be pitied if they make a bad bargain, *Caveat emptor.*

Nor can there be any objection on the score of injury to the defaulter. If he have by under-letting or other means reduced the value of the property he will get a reduced price for it. If he have reduced it below a value which would pay the balance, he has committed a fraud,

and will suffer for it. It is to be remembered, however, that under the new Law balances can never be very heavy at the time of sale, and it will be only in cases of great and flagrant deterioration that the balance will ever exceed what is likely to be bid for the Estate. With respect to under-tenants, I have already shown that the alteration will be greatly in their favor. Disturbance and dispossession will be the exception, instead of as now the rule; and the disturbance, when it does come, will come from a quarter disposed to indulgence and to equity.

It will doubtless happen, sometimes, that an honest and *bonâ fide* tenant will find himself, through the fraud or mismanagement of others, exposed to peril of enhancement, but it will now only happen in a very few cases instead of happening in all, and I do not believe that such cases, when they do occasionally present themselves, will be treated by the Government otherwise than with fairness and consideration.

More may be said on this subject, and more I shall be ready to say if necessary, but I will not at present lengthen by further arguments on the side of this proposition, a paper which is already far too long.

No. 10.

Extract from Remarks by Mr. A. J. M. Mills, on the Draft of a new Sale Law: read in Council on the 14th October, 1839.

XXXVI. I am strongly opposed to this Section, and after mature consideration of the subject, I am disposed to consider the alteration proposed by Mr. Halliday, as likely to operate most beneficially in its effects. I have above advocated the purchase of Estates by Government when there are no bidders, and when the bid does not cover the arrears. I would however suggest one alteration, *viz.*, that the claims of purchasers shall be in the first instance summarily adjudicated by the Collector under Section XXXV., the going through the tedious process of the Civil Court in some forty or fifty cases would have an extremely bad effect, it would deter purchasers from buying, and lower the value of the property.

Leg. Cons. 10th Feby. 1840, No. 18.

It will be contended that the Zemindars will take advantage of the law, and sub-let their Estates in small parcels among their friends and

relatives. Such breaches of faith may occur, but I think the instances will be rare; moreover if the suits are summary, redress will be so quickly afforded that this objection will be of little moment. The rigl and interests of proprietors are always sold in satisfaction of decrees of Court. I have never yet found the supposed difficulty of getting possession of such purchases operate to deteriorate the value of property, or that the purchasers did not obtain as easily and completely possession, as the purchaser of an Estate sold for arrears of Revenue. These facts convince me that the alteration of the Law will not injure purchasers.

No. 11.

Extract from Remarks by the Landholders' Society, on the Draft of a new Sale Law: read in Council on the 14th October, 1839.

XXXVI. The Landholders' Society, believing that the tenures alluded to in the 1st and 2nd Clauses of Section XXXVI., are those which are protected by Regulation VIII. of 1793, has no remarks to submit, but in regard to the tenures referred to in the 3rd Clause, *viz.*, lands held by koodkasht or kudeemee ryots, having the right of occupancy at fixed rates, the Society directs us to submit the following observations for the consideration of His Honor in Council.

Leg. Cons. 10th Feby. 1840, No. 18.

The Society concludes that the right of that class of ryots here intended to be protected is that which is named in Clause 2, Section LX., Regulation VIII. of 1793. With a full confidence in the laudable motives of the Supreme Government to protect, by the present Act, the rights of all classes of landholders and under-tenants, as well as to define more clearly the immunities belonging to their respective tenants, we beg respectfully to submit, that it would be considered a boon by the landholders and their ryots, if the particular description of tenures here alluded to, under the designation of "koodkasht or kudeemee," were to be clearly defined, and the nature of the rights thereto appertaining, fully explained; such a declaratory provision would in a great measure remove the cause of that unnecessary litigation, into which people now so frequently enter for want of a proper knowledge of their respective rights and privileges as secured by law.

It is already known to the Government that the term koodkasht ryots means, as explained in Section XXXII., of Regulation XI. of 1822, koodkasht, kudeemee ryots, or residents, and hereditary cultivators, having a prescriptive right of occupancy, and that, as such, they cannot be ejected from their possession, so long as they pay their stipulated rent at a fixed rate according to the Pergunnah nerick.

The fundamental Regulation, *viz.*, VIII. of 1793, Section LX., Clause 2, is intended to secure the immunities of those koodkasht ryots as were in possession of their lands prior to the period of the Decennial Settlement, in holding their lands at the rate of the *nerick bundee* of the Pergunnah, and neither the wording nor spirit of the Regulations can be supposed to apply prospectively to all resident cultivators generally, who have derived their rights from Zemindars, subsequently to the Permament Settlement. The right of the latter must be annihilated with the right of the Zemindar by a Revenue Sale, as provided in Section V. Regulation XLIV. of 1793, with the exception noted in Sections VII. and VIII. of that Regulation.

Thus it will be seen that the resident ryots may be divided into two classes, *viz.*, those who are holding possession from a period anterior to the Permanent Settlement, and those who have come to reside on the Estate subsequently to it. The Landholders' Society presumes that the protection afforded by the Clause in question is intended to apply only to the former of these two classes of resident cultivators, and that the latter are to be considered as mere tenants at will.

If the Supreme Government thus construes the Law, which the Society doubt not it will, respecting the distinction of the immunities of these two classes of ryots, we are requested to solicit that a definite Section be introduced in the Act to remove existing doubts on this question, which doubts may often lead to unnecessary litigation and contradictory decisions, particularly in the Courts of Sudder Ameens and Moonsiffs, where such questions, owing to the amount in dispute, are in the majority of cases brought to issue, and whose decisions under the existing laws cannot have the benefit of correction by an appeal to the Sudder Dewanny Adawlut, the highest judicial tribunal in the country.

On Clause 4, Section XXXVI., the Society has no remarks to submit.

Clause 5 excludes the purchaser of an Estate from the power of ejecting or enhancing the rent of farms granted on good faith by the

former proprietor on leases not exceeding 20 years. This, the Society begs leave to observe, appears objectionable. *First*—Because, when a Zemindar finds that his Estate will soon be brought to the hammer, he will consider it his interest to give such apparent *bonâ fide* farms to his relations and dependants, and thereby virtually shackle the purchaser for at least 20 years from making any new arrangement in regard to the lands there farmed out. This would be tantamount to a fraud, and yet the provision under review opens a wide door for it. *Secondly*—It is an anomaly and an inconsistency thus to protect a mere temporary leaseholder, and leave the putneedars, who have obtained their rights not only on good faith of the former Zemindar, but by actually paying a good consideration, unprotected against the operations of Section V. Regulation XLIV. of 1793, and other laws on that subject. *Thirdly*.—By this Clause the rent of such a farm is secured on the data afforded by an average of the rent realized from lands of the same description in the vicinity for the three preceding years. Suppose the Zemindar were to choose such three years as occurred during the late famine in the Upper Provinces, or the inundation which some time before laid waste the Southern Districts of Bengal, when the Estates were, as too well known to Government, unable to pay the Sudder Revenue, and having thus farmed it out at a reduced jumma, allowed the Estate to be brought to the hammer; how would the purchaser realize from it the jumma due to Government, and if it fell into the hands of Government, how could the Government get rid for 20 years of these leaseholders who would, during that period, under a favorable season, continue to enjoy the advantages of so low a *quit* rent as to be almost a species of *ayamahdars?* Indeed it would appear that these 20 years' leaseholders are for that period to be placed on a far better footing than the kudeemee koodkasht ryots; for whilst the latter have their rents determined according to the *nerick* of the Pergunnahs, the former, by conniving with the Zemindar, might have the rent fixed according to the realization of three of the worst years.

The wording of the *Proviso* at the conclusion of Section XXXVI. does not appear to be sufficiently clear. Is it meant to bar the Zemindar from ejecting any of his ryots, without reference to the nature of the tenures? If so, it at once destroys the very basis of the fundamental law on which the Permanent Settlement stands, by closing the door against all improvement; but if not, a clear explanation to that effect appears to be indispensable. Suppose the Zemindar wished to take

the lands from his tenants who were not kudeemee koodkasht, but pykast, or new tenants, and lay them out himself in a manner so as to yield him a better return, which the ryot, for want of sufficient capital or industry, could not, or would not accomplish, has the Zemindar no power to eject the pykast or new ryot on his refusing to enter into a new arrangement, and improve his lands? These are questions arising out of the *Proviso* under reference, which that *Proviso* does not answer, and therefore we respectfully submit should be taken into consideration and clearly explained.

The Society presumes that it cannot be the intention of the Supreme Government, at this remote period, to interfere with any immunities which were secured to the landholders by the laws of the Permanent Settlement, which however would be the case was the power of ejecting all classes of ryots refused to the Zemindars, without reference to the nature of the tenures.

The Society desires us to state that the opinion it has taken the liberty to submit, in regard to the rights and privileges of sudder malgoozars, and various classes of under-tenants, appears entirely to coincide with that of Mr. Leycester, the late Senior Judge of the Sudder Dewanny Adawlut, and the Hon'ble Mr. Ross, the late Deputy Governor of Bengal, then fourth Judge of the Court, in opposition to that of Mr. J. Harrington, who attempted in a proposed Regulation in the year 1827, to grant certain new imunities to the ryots at the sacrifice of the sudder malgoozars. But the said proposed Regulation, the Society is glad to find, was rejected without being promulgated or published by the Governor General in Council. We beg to refer the Government to the said Minutes of Messrs. Leycester and Ross, when it shall again take this subject into its consideration.

No. 12.

Extract from a letter from J. P. Grant, Esq., Officiating Secretary to the Government of India, to F. J. Halliday, Esq., Secretary to the Government of Bengal, respecting the Draft of a new Sale Law: dated the 10th February, 1840.

18. The effect which a sale for arrears of Revenue has on under-tenures created since the Decennial Settlement, or liable at the time of that settlement to enhancement, is a matter of extreme importance. The question is ably discussed, and the history and present state of the Law on this point are clearly explained in paras. 95 to 129 of the Calcutta Board's letter.

Leg. Cons. 10th Feby. 1840, No. 17.

19. The President in Council feels it unnecessary to consider whether it was by oversight or intentionally, that holders of Talooks created since the Decennial Settlement were, by Regulation XI. of 1822, rendered liable to ejectment, as well as to a regulated enhancement of rent by a sale.* He is clearly of opinion that enhancement of rent is the only power necesssary to be given to auction purchasers in such cases; and he has therefore retained the provisions of the draft prepared by the Board, in this respect, for the permanently settled Provinces.

* See para. 112.

20. The President in Council has adopted in the Draft Act the proposal made in your letter under reply, for saving *bonâ fide* leases to farmers, for terms not exceeding twenty years, and at adequate rents, from being affected by an auction sale. This Provision, His Honor in Council is convinced, will be another very great improvement on the present law.

21. But His Honor in Council would wish the Revenue Authorities to give their best attention to the principle whereby auction purchasers acquire rights over certain *bonâ fide* under-tenures, greater than those vested in the late defaulting proprietors; with the view of determining whether the practical enforcement of that principle is not susceptible of still further restrictions, without danger to the security of the public Revenue, as insured by the perpetual hypothecation of the land itself.

22. There is no question, His Honor in Council observes, but that the enhancement of the rent of under-holdings, *created perhaps* forty or fifty years back, and held for all that time in good faith, without default on the part of the holder, merely because of the fault of his superior, which he has no means either to prevent or remedy, is a severe hardship to the individual, and must operate injuriously on the interests of agriculture generally, by the uncertainty which it creates. This evil, therefore, obviously, ought to be lessened as much as possible, and on no account to be extended beyond the necessity of the case. It is impossible to allow, without restriction, tenures made after Settlement to be valid, as against Government, because thereby the Revenue would be in constant jeopardy. In point of fact, the Zemindar's whole Estate being originally liable for the Revenue assessed upon it, any tenure created by him after Settlement at a rent inadequate to afford its share of that Revenue, is, so far as Government is concerned, essentially fraudulent and void *ab initio*. There is no hardship, therefore, nor injustice, in voiding that tenure *to the extent required for the security of Government*, whenever the Revenue of Government fails; and the right to do so can never, under any system, be abandoned by the State. But the necessity of voiding the tenure *in toto*, (and the right to enhance according to the present value of the land) differs not in principle from absolute annulment,) is not so apparent. So far as the Zemindar sells or gives away to an under-holder any part of his *profit* from the land included in the tenure, or his right to profit from its future improvement, the transaction is essentially good, and it affects the rights of no third parties. So also there seems to be no absolute necessity for Government to interfere with any transaction between the Zemindar and an under-tenant, when the Zemindar falls into arrears, unless *in consequence of that transaction* the arrears would be lost, and the future Revenue would be risked, by reason of the Zemindar's rights becoming unsaleable. It is manifest that to abstain from such interference is no more than justice to the under-tenant, and no less than justice to the superior, who has himself already made over his interest, or part of it, to another. It must be presumed, that under the present law, any loss to an under-tenant who had given a valuable consideration for his tenure, arising from the sale of the Zemindaree owing to the default of the Zemindar, is recoverable by the under-tenant from the defaulting Zemindar by a civil suit; for the Zemindar has sold the same thing twice, once to the under-tenant, and again to the auction purchaser.

But it would be better to prevent, if possible, the necessity of such a suit, and to provide against the risk of the Zemindar's insolvency, attending it.

23. Mr. Halliday has suggested a scheme whereby all *bonâ fide* under-tenures of whatsoever description shall be maintained at an auction sale, in the same manner as at a private sale; but if the Zemindaree, under such circumstances, be not purchased, then all the rights of the defaulting Zemindar shall lapse to Government, who shall enter in his place, with a right to levy the Revenue directly from the land, after a re-settlement of all the under-tenures now liable to annulment or enhancement of rent by an auction purchaser.

24. No strong objection to such a scheme, on the ground of risk to the public Revenue, at present occurs to His Honor in Council; for so long as the Zemindaree is saleable, so long must the Revenue be secure.

25. Such a change of Law would be no hardship on the Zemindar. A Zemindar in arrear has a right to claim that his Estate be offered for sale, in order that he may obtain its value after payment of what is due from it. But when his Estate is found to be unsaleable, it is apparent that he and his ancestors have already divested themselves of the whole of their interest, which consisted only of the Zemindaree *profit*. The re-entry of Government into the management of the collection of the Revenue assessed in the land is then natural; and practically it is nothing more, as it affects the Zemindar, than the present custom of purchasing on account of Government for one rupee. It is clear that as between the Zemindar and Government, an Estate is unsaleable when it will not realize a sum equal to the arrears for which it is put up for sale.

26. It is apparent that such a change of Law would be an unqualified benefit conferred upon the holders of under-tenures liable at present to enhancement of rent, or to annulment by an auction purchaser.

27. Fully to carry out the principle explained in para. 22, it would seem to His Honor in Council necessary to add provisions against the re-settlement of any Talooks which existed at the time of the existing Assessment of Revenue, at a rent higher than was paid by such Talooks at the time of that Assessment: and against the enhancement of the rent of any *bonâ fide* tenure, whether permanent or temporary, when the rate of rent before paid thereon to the Zemindar is not inadequate to afford the due proportion of the jumma assessed upon the Estate.

28. The President in Council will be glad if the Revenue Authorities were to consider this matter with attention, and report what they think of the proposal, particularly what difficulties, if any, they anticipate as likely to occur in the way of the practical working of a scheme of this nature, and to what extent they think the principle can be acted upon with safety.

No. 13.

Extract from a letter from E. M. Gordon, Esq., Commissioner of Dacca, to the Secretary to the Government of Bengal, respecting the Draft of a new Sale Law: dated the 15th May, 1840.

Section XXXVI. The scheme proposed by Mr. Halliday with reference to this Section, is so very important, and as it seems to me so very objectionable, that I consider it to be my duty to go fully into its merits.

Leg. Cons. 18th Jany. 1841, No. 3.

The scheme is so clearly described by its author, that a repetition of its meaning is unnecessary. In the first place, I cannot allow the hypothesis on which the plan rests, to remain unnoticed. "If ever," says Mr. Halliday, "any great improvement is to happen to this country, "it must come by means of the introduction as *under-tenants* of Zemin- "dars, of men of skill, capital and enterprize." I apprehend, Mr. Halliday has in view, European skill, capital and enterprize; at least, it is not apparent on what grounds he could rest his hopes of improvement, from the exertions of native *under-tenants*, who very much resemble in their habits and character the chiefs of whom they hold tenures. Is it true, then, that Europeans would have sufficient inducements to lay out large investments of capital by becoming under-tenants of Zemindars, if auction purchasers, other than the Government, succeeded *solely* to the rights and interests of their former proprietors? Europeans, I apprehend, will lay out capital on the land only in the expectation of receiving large returns. Could they receive from Zemindars land to such an extent, and on such easy terms, as to induce them prodigiously to increase the produce, and to *add** to the

* NOTE.—*By adding* I mean *new* exports. I much doubt, whether Indigo can safely be increased beyond the quantity now grown.

list of valuable exports? I confess I more than doubt this. It appears to me, that the hope of improvement through European instrumentality, lies in the probability of their gradually becoming Zemindars by purchasing the Estates of Zemindars. The customs existing amongst Zemindars, the division of their property amongst their heirs, their family quarrels, their careless habits, their increasing poverty, the effect of the resumption laws, especially the resumption of chur lands, are all tending to bring their Estates gradually into the market. This at least is my opinion. Europeans I think are likely to buy Zemindaries, in the hope of breaking the under-tenures, now paying inadequate rents. That Europeans will gradually become extensive proprietors in Bengal, if the principle of the present Sale Law with respect to purchasers continues, seems to me highly probable. That they will very much extend their transactions as tenants, I have, as I have said before, little or no hope.

Supposing, however, the tendency of Mr. Halliday's scheme to be as he anticipates, would the effect of it not be to throw all land sold into the hands of Government? At present, purchasers can form a tolerably accurate estimate of the value of the property they think of buying. The line is pretty well marked as to what tenures will stand, and what can be broken. But if all tenures, created at whatever time, by the Zemindar, were valid, who would bid for an Estate? How could a purchaser be sure that a Zemindar had not created new tenures, and how could he guard against *false* or collusive transactions subsequent to the sale, between tenants (not hitherto enjoying any privileges) and the former Zemindar? Men must be fool-hardy indeed, who would bid freely for property sold under such circumstances. I infer from the remarks of Mr. Mills on Mr. Halliday's plan, that he considers Mr. Halliday's auction purchaser, and a purchaser of rights and interests at a sale in satisfaction of a decree, as placed in analogous circumstances. Surely this is not the case. The purchaser at a decree sale, for the most part, only comes in the place of one of the sharers. He trusts in the joint responsibility of the other sharers. Not so the auction purchaser. He is responsible for the whole of the Government demand. Besides, is it not notorious, that for the most part, sales held in satisfaction of decrees fetch a much smaller price than sales for arrears? But if such a law decreased, to an immense extent, the value of property, what is to be said of its justice towards the *honest* Zemindar? Is he, whom misfortune reaches, and who is compelled to sell, thus to have his property deprived of all value?

Lastly, how could the Government preserve its fair fame, if it enact one law of purchase for itself, and another for all other purchasers? In vain would you tell the natives, that it was the improvement of their country you had in view, in promulgating such a law. They would not believe you, and all that moral power, which results from the confidence reposed by the people in the honesty of the British Government, would be gone. If Mr. Halliday would give up all claim of enhancement beyond the sudder jumma, on the part of Government also when it became a purchaser, I should say in this case too, that such a sacrifice would be contrary to wisdom and sound policy.

No. 14.

Extract from a letter from J. I. Harvey, Esq., Commissioner of Chittagong, to the Secretary to the Government of Bengal, respecting the Draft of a new Sale Law: dated the 23rd May, 1840.

2. As the most convenient arrangement, I shall first consider the different prominent questions connected with the proposed Law, to which the Government of India direct attention in Mr. Secretary Grant's letter to the Government of Bengal, dated 10th February, 1840, and afterwards proceed to consider in detail the provisions of the proposed Sale Enactment, Section by Section.

Leg. Cons. 18th January, 1841, No. 4.

The annulment of under-tenures of all descriptions, created subsequent to the Decennial Settlement, being tenures above those of the resident hereditary occupant cultivators of the soil, on a sale for arrears of Revenue, is clearly requisite to the preservation entire of the principle of the hypothecation notified in the penultimate period of Clause 1, Article IX. Section X. Regulation I. of 1793, which declares that "if any Zemindar shall dispose of a portion of his or her lands "as a dependent Talook, the jumma which may be stipulated to be paid "by the dependent Talookdar will not be entered upon the records "of Government, nor will the transfer exempt such lands from being

Proposition V. for the modification of the effects which a sale for arrears of Revenue has on under-tenures created since the Decennial Settlement, or liable to enhancement at the time of that Settlement, under the Law as it at present stands.

" answerable, in common with the remainder of the Estate, for the p
" ment of the public Revenue assessed upon the whole of it, in the ev
" of the proprietor, or his or her heirs and successors, falling in ar
" from any cause whatever, nor will it be allowed in any case to affect
" the rights and claims of Government, any more than if it had never
" taken place;" these under-tenures, can, therefore, in the case of a sale for arrears of Revenue, be only upheld by setting aside that principle. The question therefore arises, whether, either on grounds of justice or expediency, this ought to be done? The holders of under-tenures of all descriptions, are, in point of fact, sharers in the Zemindaree rights and profits of the Zemindar who created them, although not sudder Malgoozars, and must, therefore, be considered as such, in treating the subject; they cannot be considered in the light of the resident hereditary cultivators of the soil, who it is of the utmost importance to the welfare and improvement of the Estate, and the security of the public Revenue, should be carefully protected in their rights in case of sale for arrears of Revenue. It is, however, obvious, under the Law as it at present stands, that the holders of under-tenures, although possessed of a share in the Zemindaree rights and profits as above noted, are debarred by the existing Sale Laws from any means of protecting themselves and property from the consequences of a sale for arrears of Revenue. Should the sudder Malgoozar, the Zemindar, fail in the payment of the Government Revenue, justice appears, therefore, clearly to demand, that some provision should be made by which they may be enabled, if so inclined, to ward off the consequences resulting to their property from a sale for arrears of Revenue, and this power may be conveniently given them by allowing them to pay up any balances due by their superior, the Zemindar, in the same manner as is provided by Regulation VIII. of 1819, Section XIII. for the security of durputneedars at a sale of putnee talooks of the first grade for rent to a Zemindar. To grant to the holders of under-tenures this security, appears to be only just and equitable, and I am of opinion, that provision should be made for the protection of under-tenures to the above extent, in the revised Sale Enactment under consideration. The proposition, that at a sale for arrears of Revenue the rights and interests remaining to the Zemindar, the sudder Malgoozar in the Estate, should alone be sold, and not the whole Zemindaree rights of the Estate, I cannot concur in for many reasons. It will be often a point, not determinable from the records of the Collectorate, as the provisions for registry are at

present enforced, who is the Zemindar or Zemindars: probably the person whose name is recorded in the Collector's books demised some generations back, his heirs and assigns, without registering their names, have sold and transferred a portion of their Zemindaree rights to other parties, both as dependent Talooks and as sudder Malgoozars in a share of the Zemindaree; the Collector could only sell the rights and interests of the Zemindar recorded in his books; the consequence would be, he would sell rights of the extent of which he was wholly ignorant, of which he could not consequently give possession, and the attempt to obtain possession of which, would involve endless litigation, most probably affrays and bloodshed, in the case of a sale of rights and interests in execution of a decree of Court. In the case of a sale of rights and interests for arrears of Revenue in an Estate under butwara, the extent of the Estate sold is previously known, and to a certain degree defined, yet in these cases even, disputes are of frequent occurrence; in the case under discussion, where no such data exist, the consequence of such a sale would be to involve the Government Officers in litigation to an interminable extent, to endanger the security of the public Revenue, and to produce breaches of the peace without number, while the proceeds of sale would seldom or ever cover the arrear from the uncertain nature of the property sold: and in the end, the Zemindaree right remaining to the recorded proprietor, probably nothing, would prove unsaleable, and fall into the hands of Government, who would be immediately involved in similar litigation in their attempt to take possession of the rights they had purchased, which it must be remembered are that portion of the rights of the Zemindaree remaining to the registered Zemindar, not the whole Zemindaree right in the whole Estate; the under-tenants could not be touched in this case, the Government having only fallen into possession of that portion of the Zemindaree right which remained to the recorded proprietor, not to the whole Zemindaree right in the Estate. The inexpediency of this mode of infringing on the hypothecation, appears then unquestionable; let us consider whether there are any grounds of justice which require such an infringement, after the holders of under-tenures have been allowed the privilege of paying up the arrears due on the Estate at a sale for balance of Revenue. I am clearly of opinion there are none—the purchasers of these under-tenures made their purchases with the knowledge that their tenures were liable to be annulled by a sale for arrears of Revenue, and of course paid accordingly for them; they will have

had the option of saving their tenures from sale by making good the balance, thus acquiring a further lien on the Estate, accorded to them; and beyond this I cannot see that they can have any claim in point of equity, neither on the grounds of justice or expediency; therefore I am of opinion that the integrity of the hypothecation should not be infringed, on the contrary, its integrity ought to be most watchfully guarded, as the corner-stone of the Land Revenue system of taxation. It appears to me that improvement may be expected to make more rapid strides in the hands of a Zemindar or auction purchaser in an Estate unencumbered with under-tenures, than in one where such tenures exist, neither is it the necessary consequence of a sale for arrears of Revenue that all the under-tenures extant in the Estate at the time of sale shall be annulled by the auction purchaser, it is more than probable that he will find it to his advantage to retain a portion of them to assist him in collecting and in promoting cultivation; but it is necessary that he should have the power of annulling these tenures, to enable him to obtain such full possession of his Estate as he ought to have, to ensure the security of the public Revenue. Similar remarks apply to the case of *bonâ fide* farms, to the holders of which I would also give the option of making good the balance due on the Estate, acquiring a lien on it to that extent.

Section XXXVI. What are the pergunnah rates to be observed in fixing the rent of lands open to enhancement? Are they the Pergunnah rates extant at the Decennial Settlement, or are they intended to vary with the present and future price of the produce of the lands? If the former, I doubt in many cases it will be found impossible to ascertain them; if the latter, is it not desirable that a fixed rule for determining the Pergunnah rates of rent payable by the cultivator, beyond which he is not to be assessed, should be laid down with reference to the gross produce of the land? A rule of this description will go further to protect the rights, and to prevent quarrels, disputes and litigation between them and their Zemindars, and to guide Courts of justice in their decisions, and to preserve uniformity of decisions in our Courts in such cases—the attainment of all which objects must be allowed to be more desirable in legislating for this country, than any rule the Government could enact. The Government have clearly a right in the case of Estates sold for balance of Revenue to determine these points by a legal enactment, nor can any party, neither the defaulting Zemindar on the one hand, nor the auction pur-

chaser on the other, object to such a procedure, as in any degree trenching upon their rights; the former can always save his Estate from auction sale by paying up arrears, the latter will of course suit his price to the value in his estimation of the property he purchases, while under-tenants of all descriptions and auction purchasers, will be more secure in their just rights. The pergunnah rates of rent of lands open to enhancement ought, I am of opinion, to be determined not with reference to the rates existing at the Decennial Settlement, but with reference to the present and future price of produce, and to the gross produce of the lands to be assessed. These points might always be ascertained with accuracy sufficient for the purpose, with reference to the crop produced on the lands and the price of produce in the nearest *hauts* or market places. The proportion of the produce to be assigned to the cultivator ought to be laid down for the guidance of the Courts. These points legally enacted will go far to remove litigation on this point from our Courts, whose decisions now on the subject of the enhancement of rents, vary with the individual opinions of the Judge for the time being. The rights of koodkasht and kudeemee ryots also require definition; it ought to be clearly enacted whether their tenures are hereditary and transferable by sale, subject to the payment of the rent which may be payable by each holding, and it ought to be clearly declared whether the rents *bonâ fidè* paid by these tenures at the Decennial Settlement are to be considered the rents payable from them now and for ever, or whether these rents are liable to increase and decrease with the Pergunnah rates, with reference to the present and future price of produce in common with the rents of Talooks (not istimraree and mokurruree) existent at the Decennial Settlement, liable to re-assessment at the Pergunnah rates. It is also desirable that an additional provision should be added to this Section, declaring whether tenures, the rents of which are declared not liable to enhancement when found to be in the occupancy of the defaulting Proprietor or Proprietors, for whose default the Estate has been sold, revert to the auction purchaser or remain the property of the defaulter or defaulters in case of sale. Considering it necessary for the security of the public Revenue, that no under-tenures created since the Decennial Settlement should be recognized by Government, and viewing such creations in the light of transfers of portions of the Zemindaree rights and profits, which rights and profits are forfeited by a sale for arrears of Revenue, and with reference more particularly to the provisions of Sections XII. XIII., and XIV. of

the proposed Enactment, by which a means of preserving their rights by discharge of the arrears is proposed to be opened to the possessors of these portions of the Zemindaree rights and profits, I am clearly of opinion that the 5th Clause in favor of farms for terms not exceeding twenty years, and the concluding proviso of the Section should be omitted, and that it should be left optional with the auction purchaser to uphold or cancel all existing farms or under-tenures of any description not extant at the Decennial Settlement, as he may consider most conducive to his own interests, providing that in his re-settlement of the Estate his demand shall in no case exceed the Pergunnah rates of rent assessable on the land, to be calculated in the manner above indicated; further, it appears necessary that a modification be made of Section X., Regulation VIII. of 1831, in accordance with the provisions which may be enacted in case of sale by auction in favor of auction purchasers.

Section XXXVII. I consider the provisions of this Section unexceptionable, and would enact it, *mutatis mutandis*, in place of Section XXXVI. for the Settled Provinces.

Section XXXVIII. Ditto, ditto.

No. 15.

Extract from Remarks by E. C. Ravenshaw, Esq., Commissioner of Patna, on the Draft of a new Sale Law.

Section XXXVI. 49. If this Section is to stand, I suggest, first, that the words of Section LI. Regulation VIII. of 1793, be inserted instead of quoting the Regulation; secondly—That it be required that all leases should have been registered in the Collector's Office a year before the sale of the Estate; and thirdly,—That after the final word "granted" be added "provided that those three years were not years in which drought, "inundation, or other calamity seriously affecting the assets of the "Estate, may have occurred."

Leg. Cons. 18th January, 1841, No. 5.

50. With respect to Mr. Halliday's proposition for the maintenance of all under-tenures, I am not prepared to offer any serious objection.

No loss would be sustained by Government, because, in the absence of bidders, the Mehal and all its tenures would lapse to the State; no wrong would be done to the defaulter, as the Estate would be sold subject to the burdens he himself had imposed, and he would be saved the expense of the law suits which would otherwise be instituted against him by mortgagees, &c; lastly,—The purchaser would have no reason to complain, as he would pay so much less for the Estate in proportion to the number of its registered tenures. The only question is, whether he could ascertain with any accuracy the extent of such engagements. To secure this object it would be necessary to reform the system of registry, which, instead of being partly under the control of the Judge, and partly under the Collector, as at present, should be entirely in the hands of the Collector, and the Register kept in such a manner that all leases, mortgages, &c., in any given Estate, might be ascertained on inspection. A similar Register might be kept by each putwaree in each village for ryottee leases, which are of course entitled to as much protection as that of farmers; a copy of the entries in this Register might be sent to the Collector for record with the sixth-monthly accounts of collections, &c., which they will be shortly required to furnish under the orders of Government, dated 10th March, 1840, No. 423.

N. B.—The amount for which an Estate or part of an Estate is mortgaged, should be inserted in the Register.

51. With reference to para. 27 of Mr. Secretary Grant's letter, it may be objected that we cannot make any alteration in the rights conveyed by the Permanent Settlement. If a Zemindar has alienated any portion of his rights, he cannot complain of his Estate being sold with the incumbrances he has himself created, but with those exceptions he may claim that it be sold with the conditions annexed to it at the time of his permanent engagement. The Statute of Limitation, II. of 1805, might however perhaps be held to apply to under-tenures, or it might be more distinctly declared that the payment of the same rent for 60 years without claim on the part of the Malik to increase, shall be held equivalent to a perpetual lease.

Section XXXVII. 52. It is not explained in what manner the Zemindar is to proceed against a tenant, where he fancies that the latter holds lands on too favorable terms. Is he to proceed by attachment, or summary or regular suit? The first would be highly objectionable, the last would be tedious and expensive, the second would seem preferable.

Section XXXVIII. 53. "The last preceding Section" is obscure, why not say briefly Section XXXVI., and why not specify the Districts in which this Section is to have effect? Suppose in Bengal or Behar a resumed Estate settled for 10 or 20 years be sold for balances, are the provisions of Sections XXXVI. or XXXVIII. to apply?

54. What is meant by Mofussil Talookdar?

55. From the phrase or proviso "not being one of the Proprietors "party to the engagement of settlement or his representative," it is to be inferred that an engaging Malik on the sale of his milkyut may be ousted from his koodkasht or neejjote lands. I submit, however, that all that he loses by the sale is his proprietary title in the Estate, and not his rights of occupancy as a cultivator; so long as he pays for the land hitherto cultivated by him, the same rent as other ryots for lands of the same quality, I conceive that his possession should not be disturbed.

No. 16.

Extract from Remarks by Welby Jackson, Esq., Commissioner of Moorshedabad, on the Draft of a new Sale Law, and an Extract from his letter to the Secretary to the Government of Bengal, dated the 16th June, 1840, on the same subject.

Leg. Cons. 18th Jany. 1841, No. 6.

Section XXXVI. to XXXVIII. These Sections do little more than enact over again the provisions of Regulation XI. 1822, regarding under-tenures, the chief difference is that *bonâ fide* farms for terms not exceeding 20 years are upheld. The Landholders' Society wish to have the terms koodkasht and kudeemee ryots explained, in fact to have the nature of the various tenures of all descriptions laid down. Mr. Halliday proposes to uphold all under-tenures and engagements with the former Zemindar, until the Estate has by that means become good for nothing, when, no one purchasing, it will be forfeited to Government, and the under-tenures with the old restriction are to fall in. Mr. Halliday relies on the Government dealing fairly with all classes of such tenants, on their tenures being forfeited.

The chief objection I have to these Sections is, that they do too much, and the suggestion of the Landholders' Society would render them

more objectionable by making them do more; the Society, however, is so far right, that if we are to declare the respective rights of the various tenants of lands, it should be done completely and distinctly, from the Zemindar downwards, not partially, but such a regulation should be separate, and should not be tacked on to the end of a Sale Act; the the provisions of Regulation XI. 1822 were all that was wanted, short of an Act declaratory of rights, and I would go no further at present than to re-enact these provisions. I doubt whether it would be found practicable, after the fullest and most searching inquiry, to define correctly the rights of all descriptions of tenants; any mistake would be of serious importance; moreover it should be held in mind that the legislature is not legislating for a society in a state of infancy; it is not to create rights but to declare them, where they are well ascertained; disputed rights must be left to the Courts of Justice. The provision in favor of *bonâ fide* leases of 20 years, appears to me objectionable in this respect,—the Zemindars have never had the right to create such a lien on the property, and it would be an alteration of the whole system to allow them to do so now; it would further be useless, if not injurious, for if the farmer paid a fair rent, that is, if it were a *bonâ fide* lease, the purchaser would not wish to oust him; but the proof of good faith, *i. e.*, that the rent was fair, would be very difficult, and the necessity of proving it would lead to much litigation.

The Zemindars had never a permanent unconditional right in the land; they were mere Collectors of the Government Revenue, and they are so now; the Government has given them a right to retain the Estates in their hands as long as they pay the Government Revenue; they may under-let if they please, but cannot prejudice the Estates placed under their charge; their deeds have no effect from the time that they cease to pay the Revenue, and thus lose their right of occupancy. While they perform their part of the contract, the Government allows them to occupy; when they fail, the Government resumes—the method of resumption is by selling to the highest bidder the Estate in its original state, unfettered by the acts of the defaulter, this is the principle of the tenure, and we cannot touch it without affecting the whole system; besides the rule regarding *bonâ fide* leases would deter bidders; the people know what is a Zemindar's right, and they have bid for such a right for many years; it is familiar to them, and they are acquainted with its value; but they do not know the value of a Zemindaree right modified as is proposed, and they would bid in the dark;

how can a stranger guess what leases *bonâ fide* or *malâ fide* exist? Mr. Halliday's plan appears to me subject to the same objection; he retains however the germ of recovery on the Estate reverting to Government; but why this remedy should be withheld on sale (at Revenue auctions) to private individuals, I cannot see; it seems too an anomaly to give Government as purchaser a right to annul under-leases, and to withhold it from others,—there should not be this arbitrary difference; I would much prefer adhering to the present principle, that of annulling the acts of the Zemindar on sale for arrears of Revenue; Government should of course always bid to the extent of the arrear, but no law is necessary for this; a circular order is sufficient, and it should be strictly enforced.

The contract between the Government and the Zemindar is simple and well understood, as long as we do not try to combine the ideas of English tenures with it; the Zemindars are not landholders in the English sense of the word.

I deprecate any change or interference with the system of tenures, or with the reciprocal rights of Tenants, Zemindars and the Government; such interference, in my opinion, cannot take place consistently with the original declaration of the Government in assuming the Dewanny, and if it could, it would, I think, be extremely impolitic,—the only interference which has taken place, the Permanent Settlement, which gave up spontaneously, and without any return, a valuable right of the Government, has been a dead loss.

If the Zemindars or their farmers were in the habit of laying out capital on the improvement of their lands, it would be an object to retain them; such a Zemindar would pay his Revenue, and would not run a chance of being ousted; but how few Zemindars lay out the smallest sum in this manner, how few farmers? The farmers, and indeed the Zemindars too, generally collect as much as they possibly can, they make a very high nominal rent-roll, and then collect as near as they can to the amount: but it is almost always impossible to collect the whole, and their ryots are thus always in their debt, though the balances are nominal, the only farmers who are really improvers, are the European Indigo and other manufacturers; by creating a demand and advancing the means of producing the raw material, they extend and improve the cultivation; these men it is desirable to support; but few Zemindars would wish to turn them out, few are so blind to their own interests, and they are in a great measure safe under the provisions for

building leases; as long as their buildings stand, they can usually prevail on the ryots to supply them; besides, their leases are perhaps not always *bonâ fide*, though it might be difficult for purchasers at auction to prove them otherwise.

I would retain the old law as regards the under-tenures, and make no partial alteration; it is to be held in mind in legislating on this subject, that the voice of the ryots, of the resident and other cultivators, is not heard; the Landholders' Society represents the monied interest of Calcutta, and some of the Zemindars in its vicinity, but the people are nowhere represented, and it is very difficult to learn their feelings and wishes.

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4. I have objected to the change proposed regarding the rights of the under-tenants, after Revenue Sales; I look on all such interference in the light of tampering with the existing system of landed tenures; the system exists, and the Courts of Justice determine disputed cases; a general law laying down the principles of these tenures, and declaring the exact rights appertaining to each, is a great *desideratum*. I am not certain whether it is practicable to make such a law, but I object to partial declarations, because the legislature does not hear the voices of all classes of persons interested in the land. In the present state of the country, I look on the Zemindars as the opponents of the cultivators, not the protectors of their interests; the Zemindars are continually trying to shake the permanency of the old resident ryot's tenure, the only permanent interest in the land now existing (besides that of the Government), while the ryots are endeavouring to retain it; the Government is bound to protect them, and interested too; for rack renting, the general practice of the Zemindars where they can have recourse to it, is far from conducive to the improvement of the land.

No. 17.

Extract from a letter, from G. F. Brown, Esq., Commissioner of Bhaugulpore, to the Secretary to the Government of Bengal, respecting the Draft of a new Sale Law: dated the 1st July, 1840.

Leg. Cons. 18th Jany. 1841, No. 9.

Sections XXXVI. to XXXIX. of printed Draft. 15. These Sections bear upon the subject discussed in paras. 21 to 28, of letter from Officiating Secretary to Government of India, No. 100, dated 10th February, 1840; and on Mr. Halliday's scheme, whereby all *bonâ fide* under-tenures of whatsoever description, shall be maintained at auction sales, except when an Estate is purchased by Government in consequence of its not realizing a sum equal to the arrears for which it is put up for sale. This subject has been treated in such a just and forcible manner by His Honor in Council, and the scheme appears so self-evidently adapted to answer the ends in view, and at the same time to silence all objections against the harshness of the present Law, whereby unoffending parties are often involved in the ruinous consequences of a sale, that I have only to offer it my humble and unqualified support.

No. 18.

Extract from Observations by T. R. Davidson, Esq., Commissioner of Jessore, on the Draft of a new Sale Law.

Leg. Cons. 18th Jany. 1841, No. 17.

Clause 5, Section XXXVI. The third Section of Regulation VIII. of 1793, notified to Proprietors with whom a Decennial Settlement was concluded, that the assessment fixed was to remain unalterable for ever, whilst the proprietors of land previous to the Decennial Settlement being declared perpetual, were not entitled to enter into any engagements with their dependent Talookdars, under-farmers or ryots, for a period extending beyond the term of their own engagements. The 5th Clause, of Section XXXVI.* does not rescind this Law, or affect the position of existing tenures, but it

* Of the new Act.

creates a new class of leaseholders, to be specially protected, and to avoid the infraction of the Perpetual Settlement, it leaves ancient holdings to be abrogated, at the same time that it forbids an auction purchaser to intermeddle with a recently obtained interest! With all deference for the judgment of the experienced Revenue Officers who have drawn up the new Sale Law, I confess that to my understanding so lop-sided a measure in legislation cannot do otherwise than disgust and discontent persons who, under the Law in force, are prepared to have their engagements cancelled whenever a Zemindaree changes hands at public sale, yet who would naturally deem themselves hardly dealt with, were they ousted, and younger tenures continued to be upheld. The condition of the old holders is certainly in a degree bettered by Sections XII., XIII. and XIV., and by providently entering into a combination to liquidate the Government demand they may avoid immediate ejectment; but even after thus uniting for self-preservation, they will have the mortification to see the new farmers quietly discharging their rents, and wholly independent and careless of sudden proprietary changes; truly, turn in whatever direction they may, the old tenantry will learn to their cost, that the potter hath power over the clay of the same lump for evil and for good.

Setting aside, however, mere wrongfulness, there are strong objections to this provision, grounded on expediency, if nothing else. If it is desirable that a vast addition of business be thrown into the Civil Courts, Clause 5 is peculiarly well contrived to lead to the result, for as the Landholders' Society remark, a purchaser will in future have to contest the validity of every farm given by a Zemindar, who either finds that his Estate must come to the hammer, or who has determined that it shall do so; the purchaser will also have to discover in each case the average rent realized from lands in the vicinity of these *bonâ fide* farms for three years preceding lease, and should he not be satisfied with the rates, these too will have to be settled in Court, a pleasant and profitable task for a buyer. After giving the question much thought, I am unable to resist the conviction that the facilities to fraud opened by this Clause, and the perplexedness with which it will surround properties put up for sale, must reduce their value considerably to common purchasers; and when the Government is constrained to come forward to buy, which will not assuredly be a rare consequence of an excess of "*bonâ fide* leases," either a proviso must be introduced to permit the annulment of those leases, and so guard the Revenue from diminution, or

the Government must submit to suffer grievous losses, and many inconveniences.

I proceed to notice Mr. Halliday's important proposition with great diffidence, for although constrained to differ with him regarding the prudence of a project which goes to overturn the permanency of the Decennial Settlement, I am nevertheless bound to admit that his description of the insecurity of under-tenants, and the annoyances they endure when an Estate passes into the hands of an auction puchaser, is not overdrawn. Mr. Halliday's suggestion is ostensibly intended to render secure and save from ruin every under-holding, and viewing it in this light, I should decidedly prefer it to a law which, wholly losing sight of old tenures, introduces a new set of under-holdings with privileges and immunities which may or may not benefit the country, but which, as I have already stated, cannot help exciting a spirit of envy and angry feeling amongst a large class of the tenantry.

Mr. Halliday's sweeping alteration is clothed in the semblance of a more just principle than the partial measure embodied in the Sale Law; the alteration nevertheless is careful of expediency, for it does not omit to provide against the slightest hazard to the Revenue by showing the absolute necessity for a declaration voiding all engagements whenever a Mehal becomes the property of the State; and certainly the reasons adduced for saving under-tenures when a Zemindaree finds a purchaser are not to be gainsaid, so far as the Zemindar and the purchaser are concerned, the one having wilfully reduced the profit of his Estate, and the other, with his eyes open, having bought it thus deteriorated. Were the working of the proposition to stop here, I have brought myself to believe that it would not trench on any vested rights—the under-tenants, the landholder, and the auction purchaser being alone considered; the under-tenant is sensible, when he buys a tenure, that it is liable to be voided if his Landlord falls in arrears to the Government, and the Zemindar and auction bidder have indisputably full power to sell and purchase without let or hindrance. But the transfer of landed property, in ninety-nine cases out of a hundred, affects others than those above enumerated, and mortgagees and lien-holders, on whose claims any fall in the value of land bears most mischievously, will, by the legalization of of an alienation of Zemindaree profits, have serious subject for complaint. Their loans have been regulated by the assumed marketable price of Estates unencumbered by old or new arrangements, and the Government, being bound by Law not to allow proprietors of land to extend

their engagements beyond the term of their own possession, has indubitably led individuals to convenience Zemindars with advances of money on the security of Estates, to an extent far in excess of the sums they would fetch after the passing of an Act of protection to subordinate tenures. It matters little whether Mr. Halliday's suggestion, or the Clause as it stands in the Sale Law be adopted, the result will be pretty much the same—Mortgagees otherwise will be severe sufferers, and I think that the Government should pause before a step be taken overlooking their interests—interests, be it remembered, acquired on the faith of a Government pledge, and strengthened by the practice of the past half century.

The main object to be obtained by the projected innovation is the growth of a race of agriculturists, by whose skill, capital and enterprize, the country is to be benefitted. I am sceptical on this point, and rather believe that the passing of an Act, the drift of which would be the breach of a public pledge, would shake the confidence of the people in the Government, and render farmers less disposed than they are at present to go to any expense in improving their lands; at first the plausible arguments and promises by which the certain working of such an Act might be concealed, would blind a few speculators, but it could not long mislead even those whom it proposes especially to favour.

An Act of protection, or an Act authorizing the creation of under-tenures to run on and hold good after the interests of the person creating them has, of his own will, ceased to exist, would, "to say nothing of "designed and fraudulent self-dispossession," in its silent working, imperceptibly lead to the ruin of many improvident Zemindars, by furnishing them with the ready means of raising money and frittering away their Estates by the sale of leases; the very law which would enforce the payment of the Government rent on a fixed day, would add to the sale of under-tenures, for where a man now resorts to a money-lender, and mortgages one or more villages to meet the emergency of a sale-day, he would in lieu "the power being given to him," sell the lease of a farm.

Can it be doubted that facilities thus thrust upon the Zemindars to perpetrate roguries, or to run beyond their legitimate profits, and encroach on the margin of Revenue, would increase the frequency of cases where the Government demand would be jeoparded, and where the otherwise unjustifiable interference on the part of the Government with under-tenures would have arisen?—Having arisen the under-tenants

who may have bought their rights, would have to learn how far expediency could square with the profession of tenderness which, "to be candid" after all, merely screens the breaking up of the Decennial Settlement!

If any leases are to be preserved after an Estate reverts to Government, those in common honesty would first be considered that were of oldest date, and this obvious course being pursued, what would become of the capitalists of skill and enterprize? They must be ousted, and to effect this with justice, an investigation would have to follow to ascertain where the Zemindars' lettings began to trench on the Government Revenue.

Again, if an entire property had not been apportioned to under-tenants, how would a settlement be made? Would it be practicable or consistent to form a Ryotwar Settlement with one portion of the cultivators, and leave another portion in the hands of the farmers? Further, on what system would the rents from the under-tenants be collected? Is it intended that their engagements should be sold, as are permanently settled Estates, or would it be necessary to resort to the usual process laid down by the Regulations for the recovery of arrears by Zemindars from their defaulting farmers?

Considering that enough has been done to guard the interests of under-tenants, and encourage agriculture by the provisions of Sections XII., XIII. and XIV., I do not admit the wisdom of giving way to the strong current setting towards change in a question of such vital moment as this; and I therefore decidedly object to Mr. Halliday's suggestion, which, if adopted, would, I conceive, break through existing pledges, imminently peril the Revenue, sacrifice the interests of a vast number of individuals, hold out false hopes to others, and all without furnishing a practicable plan, or any sure calculation of the extent of good to be derived.

On careful re-perusal of the proposed Act before closing my remarks, I have observed, that no provision has been made positively to restrict the interference of the Civil Courts, save and except on the grounds of the Act not having been strictly conformed to by the Revenue Authorities. The omission of the provisions contained in Sections IV. and XXV. Regulation XI. of 1822 is, in my judgment, inexpedient. The XXVIIth Section of the Act provides for the restoration of Estates to proprietors who have been harshly and unjustly ejected, at any time within twelve

Clauses 26 and 27.

months from the completion of sale; and I do not see what but confusion and evil can be expected from leaving all cases, "after this proviso," with a limit of twelve years from their institution to the equity and good conscience of every Judge in the country.

With twelve months to lay a case before the Board of Revenue and the Government, it may reasonably be inferred that a Proprietor, wholly ignorant of law, unaware of frauds committed at the time of sale, and incapable of setting them forth distinctly, would have ample time to seek redress, and recover his property, if his case really exhibited hardship and injustice.

The evils likely to follow an order of an Equity Court upsetting a sale years after it has taken place, are incalculable; it is enough perhaps to instance the effect of annulment on under-tenants; many of these will, after sale, have had their rents enhanced, and others will have been ousted; now when the Judge in Equity has restored the old Zemindar, how are all their interestss to be settled?—for on the annulment of the sale, all persons who held from the old Zemindar will naturally have a right to re-enter and be compensated for wrongful dispossession. I have never heard a complaint whispered against the Law as it stood in 1822, and I would therefore urge the introduction of Sections IV. and XXV. of Regulation XI., by which sales of land for arrears of Revenue will not be liable to be set aside by any Court of Judicature, except for the failure of one or more of the conditions of the Sale Law, and persons considering themselves aggrieved by any act or circumstance connected with a sale, other than such failure, will have their remedy in a personal action for damages against the individual by whom or by whose fault they may have been endamaged.

No. 19.

Extract from a Minute, by J. Lowis, Esq., Temporary Member of the Sudder Board of Revenue, on the Draft of a new Sale Law: dated the 19th June, 1840.

21. I have great pleasure in recording my entire concurrence in the amendment of Section XXXVI. proposed by Mr. Halliday.

Leg. Cons. 18th Jany. 1841, No. 8.

22. The theory of the Permanent Settlement bestowed on the Zemindar the entire difference between the Sudder

Jumma, and the gross rental of his Estate; it is absolutely his own, and when he gives, or sells, the whole of this difference in any specific portion of his Estate, the new owner has no difficulty in securing his gift or purchase by dividing off his specific Mehal; for the law has provided a method for him so to do, and secured, at the same time, the proportion of Revenue due from such parcel of land. But when the Zemindar gives or sells only a portion of the aforesaid difference, the existing Law bestows upon the grantee or purchaser no security at all, for a longer period than may intervene between the date of the transaction and the next sale day. It appears to me highly desirable, that this defect of the Law should be amended, and the desideratum would, in my opinion, be very nearly supplied by the system proposed by Mr. Halliday.

Section XXXIV. Regulation XIX. 1814.

23. In this, as in other points, the object of the legislature should be to reduce to a minimum, the interference with the natural course of things, which the peculiarity of our Bengal Land Revenue makes indispensable. The antagonist principle to this is "Fiscal expediency," which, in 1793, prohibited Zemindars from granting leases for a longer term than 10 years. In 1812, when the deadening effect of short leases on agricultural prosperity began to be felt, the evil was abated, and proprietors of land were declared competent to grant leases for "any "period which they may deem most convenient for themselves and "tenants, and most conducive to the improvement of their Estates;" but the true principle was not clearly laid down, and in 1822 the explanatory Sections, XXIX. and XXX., inserted in Regulation XI., placed matters (on the old grounds of fiscal expediency) upon a worse footing than ever.

24. "Principle" says, the Law has bestowed upon the Zemindar of Bengal, [redacted]olute property in the margin of rent over Revenue left to him by the Permanent Settlement, to give, or to sell, or to let, as he sees expedient. Principle would make all transactions regarding this margin binding, as in other cases, upon both the parties concerned, nor would it interfere, without good practical evidence, that Revenue had been encroached upon, and that something, which is not margin, and was not the property of the Zemindar, had become the subject of the bargain between the parties. "Expedience" has no eyes but for Revenue; and to protect it, would not only throw doubt and uncertainty upon all transactions between landlord and tenant, but does, in reality, hold out a large money *bonus* to the former, for successfully swindling the latter.

25. The principal objection urged against Mr. Halliday's plan is, that it would destroy the performance of Lord Cornwallis' Settlement, by allowing the alienation of the whole margin of rent over Revenue, without which, it is contended, the Zemindars could not, one year with another, continue to pay their Revenue, light as it is; and that, consequently, the whole lands of Bengal would eventually lapse to Government. I doubt, in the first place, that the abrogation of the Permanent Settlement, could it be effected without any breach of the good faith of Government, would be an evil; and I doubt still more, in the second, that the proposed system would produce the results anticipated by the objections.

26. The agricultural resources of all countries are, I believe developed best and fastest by the farmer; the man, that is, who subsists mostly upon the profits of capital applied to land. To afford this man adequate security, is to ensure the application of the largest portion possible of intelligence and capital to the land; thus enlarging to the utmost the true sources whence all Revenue, whether settled permanently or not, is derived, and widening the marginal excess of rent over Revenue, which the Settlement of 1793 bestowed upon, and endeavoured to secure to, the Zemindars of Bengal. The anticipated failure of the Settlement will therefore be coincident with an enlargement of the basis upon which it rests, and an actual increase of the funds whence the Revenue is paid, will have the effect of stopping payment altogether. I cannot believe that such causes would, to any extent, produce such effects; but if the paradox be real, and the Revenue fixed by the Settlement of 1793 cannot continue to be paid by the Zemindars, without artificially repressing the agricultural prosperity of the country, there can, I think, be no question to which side the law should incline.

27. The object of those who oppose the alteration, is to retain in the hands of the Sudder Malgoozar, or the person primarily responsible for the Revenue, a due proportion of the rent of his Estate, be the rent great or small. Without this the Permanent Settlement, it is said, cannot stand, and for this Mr. Halliday's plan makes no provision. But the existing Law does not effect this. On the contrary, it holds out a direct *bonus* upon the improvident alienation of this surplus rent, and all it does, or can do, is *afterwards* to nullify these alienations, when they shall have brought about a sale for arrears of Revenue. The proposed alteration of the law would withhold the *bonus*; and I confidently anticipate that, without it, improvident alienations of rent would be less frequently made.

28. Under the existing Law, the needy or dishonest Zemindar takes heavy fines for farms at low rents, or entices farmers by long leases to invest capital in his land, and then lets his Estate go to the hammer; well knowing that this law of fiscal expediency will give him a second time the price of what he has already sold (for the fines, or salamies, are in fact the prices of portions of the difference between rent and Revenue,) and the value of the capital invested by the farmer in his farm into the bargain. But I hold that the facility afforded by the Law of making such dishonest sales, has created the evil against which our opponents would guard. It appears to me certain, that if the bargains entered into between landlord and tenant were binding on both parties, they would be made with greater circumspection on the part of the Zemindar than they are at present, and (were the bribe withdrawn) that these men would not gratuitously relinquish a position which always bestows something of weight and consideration upon those who hold it.

29. Upon the whole, therefore, I come to the conclusion that the proposed amendment of the Law *must* strengthen the sinews of our land Revenue, whoever the Sudder Malgoozars may be, and that it removes one great inducement to the improvident alienation of rent; making it probable that the Sudder Malgoozars will be changed less frequently than heretofore. These benefits are expected to result from the honest principle which declares (setting the old bugbear of fiscal expediency aside) that the least productive class of the agricultural community shall no longer be permitted to swindle all the others.

30. To remove an alloy of evil, which might be mixed with the good I anticipate, it appears to me highly desirable, that a Register should be opened, upon which all farms and leases should be entered, and to which intending purchasers should have easy access. Without some precaution of this sort, a fair price would not be given for unencumbered Estates, on which no farms nor leases had been granted, and any uncertainty on this point, would, of course, deteriorate the value of all landed property; but a Register of Farms would at once obviate this objection to the plan, and no other worthy of notice occurs to me.

31. I have already stated my opinion that, when the price bid for an Estate does not cover the arrear of Revenue due from it, it should lapse to Government. That Government, the one party to the contract of 1793, should go through the form of purchasing from the other parties that very contract, the terms of which they decline to fulfil, is

certainly an absurd arrangement, and the sooner it is abandoned the better. The natural and therefore the best course is that recommended by Mr. Halliday, and where the non-fulfilment of the contract is found to have arisen from a real reduction of the assets of the Estate, the Government demand should be forthwith reduced in proportion thereto. But when the lapse to Government has been brought about by an improvident or fraudulent alienation of rental, on the part of the Zemindar, that is, when besides his marginal excess of rent over Revenue, he shall be found to have sold or given a portion of Revenue, the Government should be restricted from infringing the terms of the leases granted by the Zemindar, except so far as may be requisite for reclaiming the Revenue improperly alienated, and reimbursing the expense of managing the Mehal. The reason for this restriction is plain. The Zemindar, as explained already, possessed a certain property in the land, which he had a right to sell and others had a right to buy. These bargains should be held as sacred and inviolable as any other bargains, and beyond what the security of the Revenue due from each Estate requires, nothing of uncertainty should be mixed up with them. If the Revenue has been trenched upon, it must be reclaimed. The Estate must have its Revenue clear of all charge from each Estate in Bengal, so long as the rent of the land is equal to the burthen; but it is entitled to nothing beyond this, and should not interfere with *bonâ fide* bargains between the different agricultural classes any further than is necessary to obtain that object.

No. 20.

Extract from a Minute, by J. Pattle, Esq., Senior Member of the Sudder Board of Revenue, on the Draft of a new Sale Law: dated the 30th June, 1840.

Section XXXVI. The 5th Clause appears to me to be both very objectionable and wholly unnecessary. The security of a farmer for the continuance of his lease by an auction purchaser is perfect, provided the lease has been granted in good faith, and has been managed in good faith with the tenantry, and otherwise prudently and judiciously. It is but reasonable to suppose that no auction purchaser will disturb a

Leg. Cons. 18th Jany. 1841, No. 11.

farmer, when his advantage is best consulted by the continuance of his lease, and when it is otherwise, surely the landlord should possess the power he now enjoys of quashing the lease. Although the lease may have been granted in good faith, it does not necessarily follow, that it will always be managed in good faith, or in such a manner as would make it the interest of an auction purchaser not to disturb it. This Clause omitted, the auction purchaser will acquire the powers possessed by the former proprietor, and will very properly be vested with no power which the former proprietor never had. The objections of the Landholders' Society to this Clause appear to me to be very just, and entitled to every consideration.

All experienced Officers agree in thinking that sale for arrears is a great evil, but an unavoidable one; also that it is our duty to diminish this evil, as far as is compatible with the purpose for which such sales are provided. I agree in opinion with Mr. Halliday, that the greatest of all evils belonging to sales, is the insecurity of real property inseparable from them, and that if we can ameliorate nothing else belonging to sales, we ought at all events to amend this; but we differ in opinion as to the means, and as to what is the most prejudicial insecurity. I consider the present general insecurity of real property to be the greatest evil, and not the particular insecurity occasioned to under-tenures, from their present liability to be cancelled by an auction purchaser. This particular insecurity will find its cure, whenever general security is provided, and that will be best effected by a prompt, cheap, and efficient administration of the laws, by the Courts of Justice, and particularly those which are to assist realization and collection of rents, by surveying and mapping the country so completely, that the area and boundaries not only of all Estates, but of every tenure, may be easily and accurately referred to, and defined, and thus made known and protected, and lastly, by the devising of some adequate remedy against the incalculably mischievous and injurious consequences to the prosperity of agriculture, continually operating and arising from the Hindoo Law of inheritance. As soon as such an addition to the general security of real property is attained, as must succeed the introduction of the measures abovementioned, the great improvement Mr. Halliday so earnestly desires for the country, must necessarily be created. All interference between landlord and tenant, that has not urgent necessity to justify it, should be avoided in all countries. Interests so inseparably and closely connected will always find in their relative advantage the most desirable

security, and the adjustment of their differences when they cannot be peaceably reconciled, should find in good laws, promptly, cheaply, and well adminstered, ample redress, and protection; such changes in the Law of under-tenures as Mr. Halliday suggests for adoption (could they with due attention to good faith be sanctioned) would be fraught with much more serious evils, than those which he anticipated those changes will remove. This important question has already more than once been under the fullest consideration by Government, and as I have understood been always laid aside.

No such intention is declared, nor do I suppose any such intention is meditated. Nevertheless, the certain consequence of such an interference with the long existing rights of Zemindars as Mr. Halliday thinks is needed for the more perfect protection of under-tenures, were it sanctioned, would be a total discouragement to wealthy and respectable individuals to become land proprietors, by which means, at no distant period, the Government would acquire all the Estates that are brought to sale for arrears.

Whenever a more perfect general security is given to real property, sales for arrears will be of rare occurrence, and with the permanency of Zemindars will be secured the permanency of under-tenures; unless this be an incorrect inference, our anxiety should be principally, if not wholly, directed to all measures, having a tendency to improve the general security of real property.

The collections of the Estates already purchased by Government, afford ample proof that it is not by extending this system, that the interests of Government will be best consulted. To my experience it appears obvious, that granting any privilege to under-tenants, to the injury of the long established and admitted rights of the Zemindars, must inevitably prove most prejudicial to the best interests of Government.

No. 21.

Extracts from Remarks by C. W. Smith, Esq., Junior Member of the Sudder Board of Revenue, regarding the Draft of a new Sale Law.

Section XXXVI. Clause 3. I have considered this subject, in my explanatory remarks, [copied below.] I object to the 3rd Clause *in toto*. We get upon a dangerous subject when we begin to lay down rules for the tenantry of the country. No doubt the Landholders' Society would like full well, to consider all ryots who commenced to hold their lands subsequent to the Decennial Settlement, "as *tenants at will*," but the Civil Courts hold a very different language, and to those tribunals we had better leave this intricate subject, varying in every Zillah and governed by no fixed law, but by the customs and usages of the country.

Leg. Cons. 18th Jany. 1841, No. 12 to 15.

No doubt if it were now possible to legislate thoroughly upon a subject, which should have been considered in 1793, and its first and fundamental principles, at least, arranged at or soon after the Decennial Settlement, very great litigation would have been saved. But even if this were now practicable, it could not be done in a satisfactory manner, unless by a separate enactment, and after the greatest and most laborious research.

I suspect the Supreme Government will not listen to the proposal of the *one definite Section*, declaring every tenant who cannot prove possession at the period of the Decennial Settlement, to be *a mere tenant at will*: and this is the Society that takes up the cudgels against the resumption laws, and their enforcement!

See remarks by Landholders' Society on Clause 3.

I consider the exception made in favor of *bonâ fide* farms to be equitable, and highly desirable for the interests of agriculture. The case put by the Landholders' Society is a very extreme and unlikely one, and laws are not framed for such, but for the 999 cases in the 1,000.

Clause 5, see remarks by Landholders' Society on this Clause.

I will put another case, far more common:—A proprietor offers a farm upon a long lease, and induces the farmer to pay down a heavy sum, as an advance (peshgee), or there is but a small portion of the

lands in actual cultivation, and the farmer, in confidence of his long lease, lays out a considerable sum of money, and in the course of a few years the lands are made highly productive. In either of these cases, the proprietor sees his advantage in getting rid of the farmer; which he manages with little difficulty, by allowing the Estate to be sold for an arrear of Revenue, and purchasing it in the name of one of his dependants.

I would retain the protection of *bonâ fide* farms for any period not exceeding twenty years.

See remarks of the Landholders' Society on the proviso.

The proviso (at the conclusion of Section XXXVI.) says not one word about ousting, but protects the ryots against any attempt on the part of any purchaser to enhance the rent beyond the established usages and rates of the Pergunnah.

Observations on Mr. Halliday's suggestions, by Mr. C. W. Smith.

Mr. Halliday had spoken of the "clumsy expedient of bidding and "buying on the part of Government." Mr. Smith inquires:

Why clumsy? It is a mode which enables the Revenue Officer to avoid purchasing any Estate which is not unsaleable, and it exercises no influence in making one Estate unsaleable.

This is where my objection commences, *viz.*, in the proposition to legalize all tenures of every description, in the state in which the defaulting Proprietor left them. It is an evil that there should be a single Estate so deteriorated as to fall into the predicament above stated. If the evil is allowed, then drop a plan which would most powerfully tend to bring the majority of Estates into an unsaleable state, and to reduce to ruin the proprietary body, who form so useful a link in the agricultural community. I have not one word to say against this plan, excepting that part of it which assimilates a sale for arrears of Revenue with a sale in execution of a decree, under the latter of which nothing but the "rights and interests" of the Proprietor are sold.

But I beg to refer to my letter of the 29th instant, in which I have discussed at length this important proposition.

Referring to that part of Mr. Halliday's scheme which relates to the reversion to Government of Estates in balance for which no sufficient bid was made at the sale, Mr. Smith remarks as follows:

I do not object to these subsidiary propositions, provided the Government do not obtain possession of the Estate by an alteration of the Law of 1793,* which secures the privileges of that Law to itself, at the same time that it deprives the people of them.

* Section V. Regulation XLIV.

I do not desire to see the Government purchase one single Estate, except as a matter of necessity under the Laws of 1793. Government may find too late that its collecting establishments very lamely supply the place of its Zemindars, all of whom have the most powerful stimulant, self-interest and self-preservation, to make them attend to their several Estates.

The injury is, the direct and immediate depreciation of landed property.

Is the securing of a Revenue Balance, the sole object of any Government?

I think a perusal of Section V. Regulation XLIV. of 1793, will show that the defaulting Proprietor has a right to look for such a price for his Estate as the annulment and enhancement of all under-tenures made by him or his ancestor will produce.

The punishment of the Proprietor is the loss of his Estate, so far he justly suffers.

Explanations of the alterations proposed by Mr. C. W. Smith in the Draft of a new Sale Law.

Section XXXVI. It is presumed, from the wording of this Section, that it is not intended to give in any case to an auction purchaser the right of ousting any tenant whatever, provided he be willing to agree to pay the purchaser according to the Pergunnah rates; that seems to be sufficient, but the remedy must be prompt. Section X., Regulation VIII. of 1831 should be rescinded, and the purchaser should not be thrown upon a civil action. The 3rd Clause of this Section is calculated to mislead, and possibly, through mistakes on the part of Judicial Officers, to create a class of tenantry which has in reality no existence; for a kudeemee ryot, with rights of occupancy at fixed rates, is a mokurrureedar, and as such protected by Clauses 1 and 2. A reference to Section XXXII., Regulation XI. of 1822 will show that a confusion has here been made between a right to oust, and a right to enhance rent.

Section XXXVII. Requires no remarks.

Section XXXVIII. Seems to have been added to the Draft with a view to include the North-Western Provinces, which, as before observed, is objectionable. Moreover it is a *verbatim* extract from Sections XXX. and XXXII. of Regulation XI. of 1822, which have given rise to so much confusion and difference of opinion, and which therefore it is most desirable should not be re-enacted in the same obscure terms. This Section seems also to give a power to oust, in opposition to the terms of Section XXXVI.; at least there can be but little doubt that reading the two together, the Courts would so decide. It would seem better to omit this Section altogether.

Section XXXIX. This Section, like the former one, seems to recognize the power of ejecting as well as of enhancing, and as the Act now stands tends to perplex the law. It is however in principle objectionable. It would compel an auction purchaser to have recourse to a regular suit, in every case where an under-tenure, whenever and however fraudulently created, is held at an inadequate rent. This seems to be most objectionable. The Landholders' Society exclaim against it as fraught with mischief, and their objections appear to be perfectly well founded. Section X., Regulation VIII. of 1831, bars any summary suit for an enhancement of rent, but Section X., Regulation V. of 1812 allows the Landlord to proceed by process of distraint, after notice has been served of a proposed enhancement, and the natural consequence is that the Zemindars, instead of availing themselves of the summary suit, resort to the severe and ruinous process of distraint. There seems to be no good reason why a purchaser should not be allowed to prefer his summary suit for enhancement before the Collector, if he thinks that justice will there be more prompt than in the Civil Court. In truth it would be advisable to encourage him to bring such matters before Revenue Officers, as being more familiar with them than the Judicial Authorities, and while the Sale Law is made so very stringent against the Zemindar, it ought not to debar him from every fair and equitable mode of realizing his own rents. It is proposed therefore to substitute for Section XXXIX., a repeal of Section X., Regulation VIII. of 1831, and to allow the purchaser to sue summarily before the Collector, or in a regular suit before the Civil Courts, as he may prefer.

4. I now proceed to notice the more prominent questions con-

nected with the proposed Law, which are embodied in Mr. Officiating Secretary J. P. Grant's letter of the 10th February last, to your address.

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Para. 18, Under-tenures.

23. I request a reference to my paper of explanations upon Sections XXXVI. and XXXIX. The provisions of Sections XXIX. and XXX. of Regulation XI., 1822, were most carefully based upon all previous Law bearing upon the same point. There was clearly no oversight. This will be at once placed beyond a doubt by consultiug the latter part of the preamble to Regulation XLIV. 1793, (and the provisions of Section V. of that Regulation) which is declaratory of the primary and indefeasible rights of the State.

I admit that in the first instance enhancement is all that an auction purchaser ought to ask, or the legislature to give him—but I would urge that a less formidable and expensive process should be open to him, than a resort to a civil action. I would remove Section X., Regulation VIII. of 1831. I would encourage the Zemindars to bring such cases in the first instance before the Revenue Authorities, as being better able to determine such matters than the Civil Courts; but I would specially restrict the trial of such cases to Covenanted Officers only.

24. It seems to me quite irreconcileable with reason that while the Government is armed with such ample powers of enforcing a prompt payment of its Revenue, the purchaser of an Estate, greatly deteriorated by a multitude of under-tenures at inadequate Jummas, should be debarred from that enhancement which the Law acknowledges to be just, until in every separate case he has carried his suit through the Civil Courts. The principle is wrong, for the Civil Courts should in such instances be the ultimate resort of either party, where the Revenue Authorities had failed to satisfy the litigants.

Para. 21 to 28. Principle of the Hypothecation and new scheme that purchasers at sales for arrears of Revenue shall only purchase the rights and interests of the defaulting Proprietor, under which all under-tenures created by him would be upheld.

25. The principle that all engagements which a Proprietor may have contracted with dependent Talookdars and others, shall stand cancelled from the date of an auction sale for arrears of Revenue, is as much a fundamental principle of the Decennial Settlement, as that which limits the demand of Revenue on the part of Government to the Jumma recorded in the Settlement. The preamble to Regulation XLIV. 1793, which is

declaratory of this principle, conveys the important information, that any other principle would be repugnant to the ancient and established usages of the country.

26. The legitimate encouragement which a wise Government can safely give to the interests of agriculture, can never be inconsistent with nor greater in extent than is compatible with the true interests of every party in the State.

It seems to me that sufficient encouragement has been granted under the Law of 1793. The Proprietor of an Estate can confer under-tenures at any Jumma he pleases, and for a period coeval with his own occupation, and that of his heirs and representatives, or he can grant farms without any restriction as to Jumma; while it is now proposed, that when the farming Jumma is *bonâ fide* equal to the average produce of three consecutive years, such farms for any time not exceeding 20 years shall be upheld, notwithstanding a sale for arrears of Revenue.

27. In my opinion these privileges convey every legitimate encouragement to the interests of agriculture, which can be given with safety. The Proprietor, in case of need, has it in his power to raise funds by a sacrifice, more or less extended, of the full returns of produce he and his family have hitherto received from his Estate, and there is a wholesome check and curb upon waste and improvidence, in the very limit which the Law has put to the deteriorating effects of such engagements on the Estate itself.

28. If the above is a sufficient provision to meet the day of need on the part of the Proprietor, so, on the other hand, I am aware of no just expectation on the part of the holders of under-tenures which is not fulfilled by the provisions of the Law. If we are rightly informed that any other principle than this limitation of their tenures to the term of the occupation of the Estate by the grantor, would be repugnant to the ancient and established usages of the country, the idea of the severe hardship in their annulment on a sale for arrears of Revenue is ours, and could not have entered their minds. They knew this invariable rule, and they made their arrangement with the Proprietor accordingly.

29. The provision is sufficient for all the ordinary transactions and dealings between the natives of this country. The farmer of a *bonâ fide* lease will have his guarantee of possession for a term fully as extended as is commonly given, notwithstanding a sale for arrears of Revenue, and the party taking an under-tenure calculates the risk of such a sale, for no other sale, public or private, affects him, and has a

pretty strong impression that even if such a sale does occur he cannot be subjected to a higher rent than will yet leave him a handsome profit; and lastly as to our Calcutta capitalists, whether European or Native, they can generally protect themselves against the effects of a sale for arrears, by making it one of the stipulations of their bargain, that they themselves shall pay the Government Revenue, (their factories, filatures and other public buildings, being protected by law,) while in any case, it would be a dangerous experiment to derange the very basis of the Decennial Settlement, merely for the benefit of a few individuals.

30. I am not aware of anything in the present state of agriculture in this country, which calls for any such important change of our long established principle and system; on the contrary, our recent inquiries into the comparative produce of Estates now and at the time of the Decennial Settlement, was so highly favorable to the system which had produced such results, that, independent of other considerations, I should be loth to make so hazardous an experiment.

31. But I proceed to mention some of those evils, which in my opinion would arise from introducing the momentous change of principle now advocated, *i. e.* that the purchaser of an Estate at a sale for arrears of Revenue, shall only purchase the Estate with all *bonâ fide* tenures of every description, or in other words the rights and interests of the late Zemindar, not as he found them, but as he left them, and that when the Estate under such circumstances shall not be purchased, shall not find a bidder for it at the full amount of balances due, it shall lapse to Government, with power to re-settle the Estate, and all its tenures which under the present Law are liable to annulment or enhancement of rent by an auction purchaser, but without the necessity of Civil actions.

First.—Surely it cannot be the interest of Government to confer legality upon all the wild waste, and spendthrift acts of a debauched Proprietor, or to give such additional encouragement to his vice and extravagance, and superadded facilities to effect his own ruin, and that of his family, by removing every obstacle to his obtaining large loans!

Secondly.—Nor can it be the interest of the Government to lend its willing aid to the depreciation of landed property, or to the more frequent occurrence of sales, and the changing of hands in the proprietorship of Estates, by the opening thus given to all the fraudulent alienations which any Proprietor, having his eye to an approaching sale, may make, in the name of his relations and dependants, without fear of the consequences, or any chance of detection.

Thirdly.—Undoubtedly it is not the interest of any Government to hasten by its legislative acts that period when landed Estates shall generally arrive at an unsaleable state, and for want of purchasers fall into the hands of Government, and the tenantry fall into the hands of ill-paid Ameens, and reckless and oppressive Tehsildars.

Fourthly.—Neither is it the interest or the policy of a wise and paternal Government, gratuitously to remove the principle which perpetuates the integrity of the Revenue and resources of Estates under the Decennial Settlement, and legalize such a lasting reduction in the resources of landed property, that even a change of Proprietors by public sale should cease to work its remedy, so that, in the event of any succession of calamitous seasons, not only would the distress be increased, but greatly protracted, by the want of those additional resources which that principle is intended to keep up.

Fifthly.—Would it not wear the appearance of unmitigated injustice, that while on the one hand the Government aimed a blow at the value of landed property, by making the purchase in very many instances so valueless as to deter parties from purchasing, (for such would be the effect of upholding "under-tenures of every description,") it on the other reserved to itself the very privilege of annulment and enhancement, (with all the facilities and immunities of Regulation VII. of 1822,) which it denied to the common purchaser. Would it not be said, and would it not also appear as if the Government, finding itself outwardly bound to respect the Permanent Settlement, took this under-hand manner of possessing itself of the landed property?

32. Nothing in my opinion could compensate for the loss of that high character as a liberal and beneficient Government, which a measure so fraught with danger, so destructive of the attributes of a moral Government, and which tends to establish so invidious and partial a Law between the case of a common purchaser and the Government as purchaser, would undoubtedly occasion throughout the empire.

33. I must earnestly solicit that this question, as well as that which preceded it (Sections III. and IV. of the new Law,) may both be well weighed and considered in all their several bearings, and that such novel and radical changes, opposed as they are to the usages of the country, and to the present habits of the people, may not be introduced; and that the freedom with which I have discussed these questions may be viewed indulgently by the Right Hon'ble the Governor of Bengal.

No. 22.

Extracts from a letter from H. M. Elliot, Esq., Secretary to the Sudder Board of Revenue, N. W. P., to J. Thomason, Esq., Secretary to the Government, N. W. P. respecting the Draft of a new Sale Law: dated the 19th June, 1840.

11. The circumstances to which the remarks in these paras. and in Mr. Halliday's able and interesting paper refer, do not obtain in these Provinces; because the Settlement has been made for every village, and in every village the rights of the Sub-Proprietors, where such exist, are defined, and the rights of the superior holder, or what in Bengal is called the Zemindar, where such a party is found, are also defined, so that a sale of either by public auction would in no way affect the other. Were it not so, the Board would urge, in the strongest manner permitted to them, the adoption of Mr. Halliday's proposition, as the only method which has come under their notice of combining the security of the public Revenue with that of private rights.

Under-tenures—Printed letters Sections XVIII. XIX., XXI. to XXVIII.,

Leg. Cons. 18th Jany. 1841, No. 18.

12. It seems a course incompatible with that inducement to improvement and encouragement of agricultural prosperity, which every good Government is bound by suitable institutions to hold out, that a *bonâ fide* purchaser, occupied in making the most of his purchase by the outlay of capital and skill, and promoting the public prosperity while laudably seeking his own, should not only be suddenly stopped, but totally ruined, by the wilful fraud of the seller. Yet such, as Mr. Halliday so forcibly points out, is, and must be, the result of the present Law. His rule seems every way unobjectionable, and amply protective of the real rights of all. The state of things has, as already said, no relation to these provinces.

13. The Board having now gone through, *seriatim*, the subjects treated of in Mr. Grant's letter, so far as was requisite for them to notice them, direct me to proceed to point out such verbal or other alterations as appear to them desirable in such parts of the Law as relate to these Provinces.

* * * * * * * *

16. Section XXXVIII. In the 11th line, the word "last" should be introduced before the word Settlement, so—"the last Settlement."

17. Instead of "any village Zemindar, &c," down to the word "representative," there should be inserted the words "any person "whose proprietary possession, together with the rights and liabilities "connected therewith, shall have been ascertained and recorded at the "last Settlement, and who was not, either by himself or his representa- "tive, a party to the engagement annulled by the sale."

18. Every proprietary Settlement, such as ought not to become annulled by a sale for arrears, having been ascertained and recorded at the Settlement, and the dues leviable from it to the superior holder and the Government Revenue fixed, the above provision will be sufficient to protect all such; and as the Settlement record is always open for the examination of the public at times of sale, by distinct order, an intending purchaser can always ascertain the nature, number, and conditions of, and income derivable from, all such tenures.

19. From the minute sub-division of property in these Provinces, and the predilection of all classes for agricultural pursuits, sub-farms are hardly known, except when the nominal lease is really a mortgage or assignment of the land to a creditor in satisfaction of a debt, or when land is given to a capitalist on a clearing lease: but for this purpose it would be a sufficient protection to *bonâ fide* leases in these Provinces to declare "that no lease should be annulled by a sale of which the "reserved rent should not fall short of 25 per cent. on the Government "Jumma, and the term of which should not exceed 20 years, nor any "lease not extending beyond the same period granted on the condition "of clearing and bringing into cultivation waste lands, except in either "case under circumstances which would have warranted the annulment "thereof by the original lessor."

Farms,—Printed Letter, Section XX.

20. In line 29 instead of the terms* there given, the Board would insert "nor (to eject) any cultivator whose right "of possession, and the conditions connected there- "with, have been recorded in the proceedings of "the last Settlement."

* "Koodkasht, Kudeemee ryot."

No. 23.

Extracts from a letter from J. Thomason, Esq., Secretary to the Government, North-Western Provinces, to F. J. Halliday, Esq., Junior Secretary to the Government of India, respecting the Draft of a new Sale Law: dated the 12th August, 1840.

7. The Board do not seem especially to have adverted to para. 4 of Mr. Grant's letter of February 10th last, now under acknowledgment. The provisions however of Section XXXVIII. as modified by the Sudder Board, appear to His Honor quite to meet the exigencies of the case in the Ceded and Conquered Provinces. The mode in which the Settlement had been there made, and its liability to future revision, render further precaution unnecessary, whilst the great variety of under-tenures precludes their enumeration. In the Province of Benares, the provisions of Section XXXVI. may have operation. His Lordship in Council will perceive that the Sudder Board strongly advocate Mr. Halliday's proposition for meeting the difficulties of the question, as applicable to another state of property from what prevails in these Provinces. His Honor concurs in this opinion.

Leg. Cons. 18th Jan. 1841, No. 18.

Under-tenures. Sections XXXVI., XXXVIII. Printed letter paras. 18, 28. Board's letter, paras. 11 and 12, and 17, 18, and 19.

8. The verbal alterations proposed by the Board or the Government, will be found written in the margin of the printed draft, which is returned herewith, the initials of Sudder Board and Lieutenant-Governor showing the source from which they originate. Such proposed alterations as require more particular notice, are mentioned below.

* * * * * * * *

10. In Section XXXVIII. it will be observed, that His Honor has in some degree modified the clauses proposed by the Sudder Board defining the under-tenures, which it is desirable to preserve from infringement in the case of a sale. The clauses, as worded by the Board, restricted their operation to such under-tenures as might have been recorded at the last Settlement. His Honor is aware that great exertion has been used to render this record as complete as possible, but it may be apprehended that it is in some cases defective. Wherever the record exists, the Provisions of Regulation VII. 1822, give it legal validity; where it should accidentally be found defective, it would be

unjust that *bonâ fide* tenures, which may have existed, should suffer from the accident. The provisions have therefore been now so worded, as to embrace all under-tenures which may have then existed, of which such record, wherever it may be perfect, will be full and sufficient proof.

No. 24.

Extract from a Minute, by the Hon'ble H. T. Prinsep, Member of Council, on the Draft of a new Sale Law: dated the 1st November, 1840.

Fourthly.—The most important point of all is the proposition to make sales ordinarily subject to the condition of the purchasers upholding under-tenures.

Leg. Cons. 18th Jan. 1841, No. 20.

I am quite convinced of the inexpediency of this, and saw sufficiently of the effects of such a system, when employed more than 20 years ago in preparing the law for Putnee tenures, which still stands exactly as passed in 1819.

It was the confusion produced by the practice of several of the Courts of Justice in upholding under middle-men after default of the superior, that induced Government to depute an Officer to inquire into the subject, with a view to provide a remedy.

Mr. Halliday, the advocate of this change, does not seem to be aware that under the existing Sale Law (Regulation XI. of 1822) a power is vested in the Government, whenever it shall see cause, to order sale of an Estate to be made for arrears, with the condition of upholding under-leases. That Law, however, has never been applied to any sale yet made. I think it is sufficient for all cases that can occur, and that it is much better that the fall of a defaulter's leases should be the rule, and their maintenance the exception, as at present, than that the reverse should be the case; but I would add to the present draft of Law rules of practice, authorizing the Revenue Authorities, upon a joint petition from the Zemindar and lease-holder, and after certifying themselves that the Jumma is at a maximum, or in excess of what is the fair average, to accede to the application of landlord and tenant, that upon future sales for arrears their particular leases should be exempted, under the rule referred to, from liability to cancelment.

This is necessary to secure speculators, who have new and expensive enterprises in view, whether agricultural or mining, or of any other description.

No. 25.

Extract from the Draft of a new Sale Law.

XXVI.—And it is hereby enacted, that the purchaser of an Estate sold under this Act, for the recovery of arrears due on account of the same, in the Permanently-Settled Districts of Bengal, Behar, Orissa and Benares, shall acquire the Estate free from all encumbrances which may have been imposed upon it after the time of Settlement, and shall be entitled, after notice given under Section X. Regulation V. of 1812, to enhance at discretion (anything in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said Estate, and to eject all tenants thereof, with the following exceptions:

Enhancement of rents in Bengal, &c.

Leg. Cons. 18th Jany. 1841, No. 21.

First.—Tenures which were held as Istimraree or Mokurreree, at a fixed rent, more than 12 years before the Permanent Settlement.

Secondly.—Tenures existing at the time of the Decennial Settlement, which have not been, or may not be proved to be liable to increase of assessment, on the grounds stated in Section II., Regulation VIII. of 1793.

Thirdly.—Lands held by koodkasht or kudeemee ryots, having rights of occupancy under the Regulations in force.

Fourthly.—Lands held under *bonâ fide* leases, at fair rents, temporary or perpetual, for the erection of dwelling-houses, or manufactories, and being so used, or for gardens, tanks, canals, clearing of jungle, or like purposes.

Fifthly.—Farms granted in good faith at fair rents by a former Proprietor, for terms not exceeding 20 years, under written and duly registered leases.

XXVII.—And it is hereby enacted, that the purchaser of an Estate sold under this Act, for the recovery of arrears due on account of the same, in Districts other than those mentioned in Section XXVI., shall

Under-tenures elsewhere.

acquire the Estate free from all encumbrances which may have been imposed upon it after the time of Settlement, and shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryots or the like, settled or credited by the first engager or his representatives subsequently to the last Settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect; provided that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any persons, whose tenure or agreement may be annulled as aforesaid, than was demandable by the former Malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former Malgoozars from the old established rates, by special favor or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the Pergunnah, Mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

No. 26.

Extract from Statement of Alterations proposed by the Sudder Board of Revenue at Calcutta in the Draft of a new Sale Law.

Sudder Board of Revenue, Calcutta.	Section.	Proposed Alterations.	Reasons.
Leg. Cons. 19th July, 1841, No. 2.	XXVI. In the 4th exception.	After the words "*bonâ "fide*" in the 1st line, introduce the word "registered," and omit the words at "fair rents" in the 1st and 2nd lines and "clearing of Jun- "gle" in the last.	The Board observe, that the clearing of Jungle is made upon terms of gradual enhancement, till the fair rate of cleared land is obtained. This item was not in the first Draft, and by omitting it, the condition of "fair rents," which is inapplicable to the other items, "Dwelling-houses, &c." and will create litigation, may be omitted.
	Exception 5 at commencement.	Insert "Leases for "clearing Jungle."	Clearing of Jungle is obviously not a "like pur- "pose," with the erection of dwelling-houses or manufactories, and may be more appropriately classed with farms.
	Before and after the exceptions.	Insert between the words "following excep- "tions" and "first" "*Te- "nures not liable to en- "hancement of rent or "ejectment of tenant;*" and at the end of the Section add "*tenures not "liable to ejectment of tenant.*" "*Tenures existing at "the time of the Decen- "nial Settlement, which "have been or may be "proved to be liable to "increase of Assessment "on the grounds stated "in Section LI.,* Re- "gulation VIII. 1793.*"	It appears to the Board that as the Draft Act runs, these additions are necessary to protect from ejectment, tenants who, though liable to enhancement of rent, have held their tenures from a period antecedent to the Decennial Settlement.
	As an addition to the Section.	Insert this provision "*Provided always that "the purchaser of an "Estate, &c.*" Section XXVIII., line 2, *ad. fin.*	This Provision taken from the end of Section XXVIII. seems to belong more appropriately to this Section, and its insertion becomes necessary, if the alteration proposed in Section XXVIII. is adopted.

* NOTE. The Section mentioned in the 4th exception, is an obvious misquotation; Section LI. is meant.

No. 27.

Extract from a letter from W. G. Rose, Esq., of the Ramnugger Indigo Factory, in the District of Moorshedabad, to the Secretary to the Government of Bengal, respecting the Draft of a new Sale Law: dated the 6th March, 1841.

7. I take advantage of the present opportunity to refer to a subject of vast importance, embracing the happiness or misery of thousands, yea, of millions—that is, the amended Draft of an Act amending the Bengal Code in regard to sales of land for arrears of Revenue, as published in the *Bengallee Government Gazette* of 2nd and 23rd ultimo.

Leg. Cons. 19th July, 1841, No. 3.

8. The preamble states, that it is deemed expedient, with a view to the benefit of the agricultural community, to regulate the number of periodical sales of Estates for arrears of Revenue; this good beginning would lead to the belief that the Regulation in question was really one intended to benefit the agricultural community; assuredly they are very much in want of something to benefit their present condition: I say so with the greatest sincerity; but the present Regulation in its amended form, if passed, will utterly ruin, instead of benefit, such portion of the agricultural community as may happen to fall within an Estate sold for arrears of Revenue; it tramples under foot all their just rights, rights dearly bought, *and acquired under the present Regulations of Government.*

9. I humbly and respectfully ask his Lordship in Council to erase the 26th Section of the present amended Act from off the face of the Draft; how such a monstrous injustice Government could ever have conceived, or for a moment entertained, I cannot make out, the exceptions to this Section amount to almost a perfect nullity. It is a positive fact that not one-tenth of the Ryots of Bengal would fall within Clauses 1, 2 and 3 of Section XXVI.

10. I will show only what effect the passing of Section XXVI. of this proposed Act would have on the three staple products of this great Empire—Indigo, Silk and Sugar.

11. In Indigo, I will take my own case. I am joint proprietor of this concern, along with another gentleman. It was established upwards of

fifty years ago. We cultivate yearly, on our own account, with our own servants and ploughs, about 14,000 beegahs of land, holding our lands from the Zemindars direct, and paying our rents to them. When the concern was first established, the Zemindars were prohibited from giving a pottah beyond a period of ten years, by Section II. Regulation XLIV. of 1793, Section II. Regulation L. of 1795, and Clause 2, Section II. Regulation XLVII. of 1803. These were afterwards rescinded by Section II. Regulation V. of 1812, and Section II. Regulation XVIII. of 1812, and Zemindars were empowered to give leases *for any length of time.* When the concern was first established, it was known that the Zemindars had not the power to grant a lease beyond ten years, except for the purposes of building; but on the understanding, implied though not expressed, that the lands should be continued to the concern, extensive and expensive buildings were erected. *After the Zemindars had the power,* we obtained in some cases perpetual pottahs, and in other cases we have cultivated lands for twenty, thirty and forty years without any pottah. During the time the concern has been in existence, the rate of land rent has been doubled, but we have always been in possession of our lands, and considering our tenure of them secure under the present Regulations of Government, we have, from time to time, added to our works at a great outlay of money; yet by the Draft of the Regulation at present under consideration, if the Pergunnahs or Estates in which our lands are situated should be sold for arrears of Government Revenue, the purchaser, be he who he may, has the power to enhance our rents *at discretion, and to eject us from the lands,* thereby rendering the buildings, which have cost us about a lakh of rupees, of no value. Let it be remembered that the whole of our lands were formerly either in jungle or are chur lands thrown up by the river, for which we have paid rents from their original formation, when they were not worth rent, in the hope of having them continued to us when they become more valuable; and our case is that of almost every Indigo Planter in the country, that has "neez" cultivation, which comprehends more than half the entire quantity of lands altogether under Indigo cultivation; so that in being obliged to give up our lands now, we would give them up *in quite a different state to that in which we originally found them.*

12. The purchaser at the Collector's sale will therefore have discretion enough to see the manifest advantage of his situation, without any Law, Rule or Regulation to guide him, subject only to his own imperial will, his own "discretion."

13. As regards Silk, the passing of Section XXVI. of this Act would operate on this article as follows: We will suppose that a ryot plants twenty beegahs Mulberry, the total cost to him the first year, before he has any returns, we will take at Rupees 14 or 15 per beegah, which is a moderate calculation; the rate of rent for Mulberry lands varies in this part of the country from 1-8 to 4 Rupees per beegah, let Rupees 2 be taken as the rate this ryot agreed to pay when he planted his Mulberry. At the end of the year, the Estate is sold for arrears of Revenue; at the commencement of next year he is served by the new purchaser, with a notice to say, he must pay 4 Rupees per beegah; he declines, knowing that he cannot afford to do so for such land,—he is ejected, what becomes of the crop? Mulberry is a crop that remains on the ground for fifty years.

14. The above remarks apply exactly to the cultivation of Sugar, the rates of rent for this production vary from Rupees 2 to Rupees 4 per beegah, according to the land, and by the present improved mode adopted, the crop remains for two years on the ground.

15. The consequence will be, that where an Estate may be sold for arrears of Revenue, from the time the first ryot suffers in the way above alluded to, every ryot on the Estate will cease to cultivate Mulberry or Sugar-cane, not knowing when the Estate may be again sold in a similar way. The Pergunnah of Rookunpore in this neighbourhood, under the Collectorate of Moorshedabad, has been sold three times within the last four years for arrears of Government Revenue; now in what state would the ryots of that Estate be now if the Act at present under consideration had been in force?—obliged to make three settlements in four years, the consequence would have been, that they would have relinquished agricultural pursuits altogether, and followed some other profession, most likely turned dacoits.

16. Some parties may argue that the purchaser at a Collector's sale will know his own interests better than to act in the way I have pointed out. That he will in the end find out his own true interests, there is no doubt, but this may take some time, and in the interim, incalculable injury may be done; the ryots will give up the cultivation of Mulberry, Sugar-cane, and all the other crops which yield the highest rents, and this once done, they will not be found very easily to betake themselves to those crops again. In fact, if Section XXVI. of the proposed Act is passed in its present shape, it will paralyze agricultural pursuits altogether throughout the country.

17. Several of the most influential Zemindars in Bengal have opportunities of stating their grievances to His Lordship in person, and to those in office whom his Lordship is in the habit of consulting on such matters, but the voice of the poor ryot they never hear. It is a notorious fact that the ryots of Bengal are worse off now, that is poorer, than they were fifty years ago, and are getting poorer and poorer every day, and the present Regulation if passed will not make them any richer. Hardly a single village in Bengal is able to pay its rents punctually. Let Government inquire into the cause of this.

18. I would respectfully give it as my humble opinion, that Government have much to answer for in not having done more than they have to protect the interests of the agriculturalists and ryots of Bengal, but if the proposed Act is passed in its present form, they will have still more to answer for.

19. I would wish further to observe that almost all the ryots of Bengal cultivate their lands *without pottahs*, and where they do hold pottahs, they are mostly perpetual. In either case the purchasers at a Collector's sale, under the present Act, could enhance their rents at discretion, or eject them.

20. The passing of the proposed Act will also lead to the sale of many Estates for arrears of Revenue, where the present Proprietors will buy "benamee." It is true, that Section XXVIII. of the proposed Act is intended to protect the ryots against this, but both this Section, and the proviso contained in Section XXIV. of the Act, will *in effect* be mere fallacies, and never can give *substantial* relief.

21. I most earnestly entreat his Lordship in Council not to pass Section XXVI. of the proposed Act, in its present amended form, and as published in the *Bengallee Government Gazette* of the 2nd and 23rd ultimo, but to substitute in its stead Section XXXVI. with its concomitant Clauses, as they appeared in the original Draft of the proposed Act, read in Council for the first time on the 14th October, 1839, and published in the *Bengallee Government Gazette* of 1st July, 1840.

No. 28.

Letter from C. J. Richards, Esq., Chairman of the Indigo Planters' Association, to the Secretary to the Government of Bengal, respecting the Draft of a new Sale Law : dated the 10*th April,* 1841.

Leg. Cons., 19th July, 1841, No. 6.

Sir,—On the part of the Indigo Planters' Association, I am instructed to submit that Section XXVI. of the Amended Draft of the proposed Act for amending the Bengal Code in regard to Sales of Land for arrears of Revenue, will, if enacted, practically inflict grievous hardship on the great body of ryots; and most respectfully to solicit that the Right Hon'ble the Governor General in Council will be pleased to withdraw such Section, and to substitute Section XXXVI. of the original Draft.

2. The Association begs leave to represent, that the obnoxious Clause will subject the ryot to rack-rent, and place him at the mercy of an arbitrary landlord, armed with the oppressive power of ejectment. For no fault of the ryot, but from the mismanagement or improvidence of one landlord, the innocent agriculturist will be liable to be transferred to another, who by said Section acquires the authority unpossessed by his predecessor of demanding an exorbitant rent on pain of ejectment. The tenure by which the ryot and his proprietors have possessed their humble tenement, may thus be rudely broken, and rights which have been deemed prescriptive, and which were sanctioned by Regulation, be barbarously invaded.

3. With respect to the effect of the enactment on the interests of Indigo Planters, who have a vast property invested in the pursuit of planting, and of the cultivators of Sugar and of Silk, the Association presume to offer their testimony, that it will be pregnant with most injurious results.

4. Craving His Lordship's re-consideration of the Section which the Association, in common with many others of the community, apprehend will be of disastrous operation,

I have, &c.,

(Signed,) C. J. RICHARDS.

No. 29.

Extract from a letter from the Honorary Secretaries of the Landholders' Society, to the Secretary to the Government of India, respecting the Draft of a new Sale Law: dated the 8th April, 1841.

Leg. Cons. 19th July, 1841, No. 11.

Section XXVI.—The Society have already brought to the notice of Government, in their former address, their views connected with the subject of enhancement of rent and ejection of tenants. They respectfully submit for re-consideration the provision of the Law in question; that the only addition they are at present desirous to bring to His Lordship's notice is, that regarding the five exceptional classes of ryots (to avoid any misapprehension), it would be advantageous to divide into two sections;—*first*, into those who are neither subject to enhancement nor ejectment; and *secondly*, into those only not subject to ejectment.

In the fourth class of exceptions, the words "clearing of jungle" are newly introduced. This description of tenure is subject to a gradual increase of rent, and can only be classed among farms; and accordingly, the Society submit, should be omitted from the present classification.

They also respectfully suggest that in the fourth Clause of this Section it is expedient to insert after the words "dwelling-house or manu- "factories," the words "mines, minerals and quarries, and such build- "ings as *bonâ fide* appertain to such works, and are necessary for carry- "ing them on."

The Society again take the liberty to trouble His Lordship, stating that unless some modification of the proposed Law be introduced, the purchasers of a property at a public sale will suffer peculiar disadvantage in the realization of rent from the under-tenants, not having in possession the accounts of the ex-Zemindars, whereby to prove the existing rent paid by the respective ryots. The notice provided for in the present Law, according to Section X. Regulation V. of 1812, being limited to the commencement of the year, a purchaser of a property at the first of the three sales, now fixed, will suffer serious disadvantage, until the expiration of the year, in regard to the realization of his rent. We are directed to submit the case for the re-consideration of His Lordship in Council. The provision of Section XXXVII. of the former Draft was some relief to the Zemindars, in the midst of their numerous difficulties. The Society, therefore, solicit its restoration to the present Draft.

No. 30.

Extract from a letter from certain Landholders at Dacca, to the Secretary to the Government of India, respecting the Draft of a new Sale Law: dated the 12th April, 1841.

Leg. Cons. 19th July, 1841, No. 13.

Section XXVI. appears to confer on the purchaser the right to enhance rents at discretion, without reference to Pergunnah nerikhs, by which demands have hitherto been limited, but the Bengallee translation of this Section appears to want the force and clearness of the English.

The original gives permission "to enhance the rents of all under-"tenures on the Estate and to eject all tenants thereof," (with exceptions), whereas the Bengallee translation empowers the purchaser "to "enhance the rent on all pottahdars and to eject all ryots" (with exceptions); this is not considered clear.

No. 31.

Extracts from Notes by Mr. D. C. Smyth, a Judge of the Calcutta Sudder Court, on the Draft of a new Sale Law.

Leg. Cons. 19th July, 1841, No. 14.

Section XXVI. Substitute as follows:

"And it is hereby enacted that the purchaser "of an Estate sold under this Act for the recovery "of arrears due on account of the same in the per-"manently-settled districts of Bengal, Behar, Orissa and Benares, shall "acquire the Estate free from all incumbrances which may have been "imposed upon it by any former proprietors, after the time of the Per-"manent Settlement, and shall be entitled, after due notice given "agreeably to Sections IX. and X. Regulation V. of 1812, and the re-"fusal of the tenant to enter into fresh written engagements in the "manner prescribed by Sections LVI. and LVII. Regulation VIII. of "1793, to make such new arrangements at the commencement of the "ensuing year, on the terms prescribed by Section VII. Regulation IV.

"of 1794, as he may judge proper for the future management of the "lands in question, subject to the following exceptions :—

First,—Tenants of lands which have been held at fixed rents for twelve years before the Permanent Settlement.

Secondly,—Dependent Talookdars holding lands at the time of the Permanent Settlement, and which have not been proved liable to an increase of rent on the grounds stated in Section LI. Regulation VIII. of 1793.

Thirdly,—Lands held by koodkasht or kudeemee ryots having a prescriptive right of occupancy.

Fourthly,—Lands held under leases, temporary or perpetual, for the erection of dwelling-houses, or manufactories, or for gardens, tanks, places of worship, burying grounds, and the like, and also for the purpose of clearing jungles.

Fifthly,—Leases or Pottahs granted under the provisions of Section II. Regulation V. of 1812, provided the tenant has been in undisturbed possession at a fair rent for twelve years previous to the date of the sale.

Proposed new Section.

Section XXVI½.—And it is hereby enacted, that in the event of the purchaser of the Estate claiming or asserting any interest in any portion of the lands or tenures described in Section XXVI. of this Act, he shall be at liberty to institute a suit for the recovery thereof against the holder or tenant in possession, under the general Regulations.

Extracts from Remarks by Mr. Junior Secretary Halliday.

Leg. Cons. 19th July, 1841, No. 15.

With reference to the observations of the Sudder Board :—

I see no objection to the insertion of the word "registered."

I would not leave out the words "fair rents," and I do not understand the Board's reason for wishing them to be omitted, or for desiring to omit leases "for jungle clearances."

I think the addition proposed by the Board to protect from ejectment tenures liable to enhancement is required.

The transposition of the proviso from Section XXVIII. to Section XXVII. seems to me unnecessary.

With reference to the observations of Mr. W. G. Rose :—

The growers of Indigo, &c. can always protect themselves by taking a *bonâ fide* lease and registering it, and as to ryots, koodkasht, kudeemee ryots are effectually protected, and no others ought to be.

With reference to the observations of the Landholders' Society :—

Most of these suggestions are the same as the Board's, and have been already commented on.

The Society would add after manufactories, in the fourth exception, "mines and quarries and their necessary buildings." But it seems to me that these are sufficiently protected under the fifth exception, for why should not a miner take out a lease for his mine?

Extract from Landholders' Society's Remarks.

Solicit restoration to the present Draft of Section XXXVII. of the former Draft, in consequence of the peculiar disadvantages a purchaser of a property will suffer in the realization of rent from the under-tenants, not having in possession the accounts of the ex-Zemindars, whereby to prove the existing rent paid by the respective ryots.

This is a request for the legalising of the present system of "giving possession," which has been already observed on.

With reference to Mr. D. C. Smyth's proposed alterations :—

The essential alterations proposed here are in the 4th and 5th exceptions.

As to the 4th exception, I agree as to the introduction of the words "tanks, places of worship, and burying grounds," but not to the rest; and I by no means concur in the alterations suggested in the 5th exception.

Additional Clause suggested by Mr. D. C. Smyth.

And it is hereby enacted, that in the event of a purchaser of the Estate claiming or asserting any interest in any portion of the lands or tenures described in Section XXVI. of this Act, he shall be at liberty to institute a suit for the recovery thereof against the holder or tenant in possession, under the general Regulations.

This alteration seems to me unnecessary. For surely the purchaser has the right of suing already, without any such special permission.

No. 33.

Extract from a Draft of a new Sale Law, settled by the Hon'ble Mr. Bird, and the Hon'ble Mr. Prinsep.

Leg. Cons. 19th July, 1841, No. 27.

Enhancement of rents in Bengal.

Section XXVII.—And it is hereby enacted that the purchaser of an Estate sold under this Act for the recovery of arrears due on account of the same in the permanently-settled districts of Bengal, Behar, Orissa and Benares, shall acquire the Estate free from all incumbrances which may have been imposed upon it after the time of Settlement, and shall be entitled, after notice given under Section X. Regulation V. of 1812, to enhance at discretion (anything in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said Estate, and to eject all tenants thereof, with the following exceptions:

First,—Tenures which were held as istimraree or mokurruree, at a fixed rent, more than twelve years before the Permanent Settlement.

Secondly,—Tenures existing at the time of the Decennial Settlement, which have not been, or may not be proved to be liable to increase of assessment, on the grounds stated in Section LI. Regulation VIII. of 1793.

Thirdly,—Lands held by koodkasht or kudeemee ryots, having rights of occupancy under the Regulations in force.

Fourthly,—Lands held under *bonâ fide* leases at fair rents, temporary or perpetual, for the erection of dwelling-houses, or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases.

Fifthly,—Farms granted in good faith, at fair rents, by a former proprietor, for terms not exceeding twenty years, under written and duly registered leases. Provided that when the stipulated rent of such farms exceeds Rupees 500, a notice, specifying full particulars of the position, rent, and estimated area of the land, shall be given in writing, by the parties, in every case, to the Collector, within one month from the date of the lease, and the Collector shall be at liberty to object to the same, in the event of his seeing reason to believe that the security of the public Revenue will be materially affected thereby. The exception

declared in this Clause shall not extend to leases objected to by the Collector, by a Notification to be fixed up in his Office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties. Provided also that a purchaser of an Estate at a sale for arrears of Revenue shall be at liberty to sue in Court to set aside such farms, on the ground of any failure of the conditions stated in the first sentence of this Clause as essential to its validity.

Under-tenures elsewhere.

Section XXVIII.—And it is hereby enacted, that the purchaser of an Estate sold under this Act for the recovery of arrears due on account of the same in Districts other than those mentioned in Section XXVII. shall acquire the Estate free from all incumbrances which may have been imposed upon it after the time of Settlement, and shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or Assignees of the original engager, as well as all agreements with ryots or the like settled or created by the first engager or his representatives, subsequently to the last Settlement, as well as all tenures which the first engager may, under the conditions of his Settlement, have been competent to set aside, alter or renew; saving always and except *bonâ fide* leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained shall be construed to entitle any purchaser of land at a public Sale to demand a higher rate of rent from any persons, whose tenure or agreement may be annulled as aforesaid, than was demandable by the former Malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former Malgoozars from the old established rates, by special favor, or for a consideration, or the like, or in cases in which it may be proved that according to the custom of the Pergunnah, Mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

Section XXIX.—*And it is hereby enacted that it shall be competent* to the Governor General in Council, when he shall see proper, at any time before a sale for arrears shall have been actually made, to direct it to be made, subject to the leases, assignments, or other incumbrances with which a proprietor in possession, his ancestors or predecessors, may have burthened his assessed Estate, or to such of them as shall appear proper. In all such cases notice of the condition imposed by the Governor General in Council shall be given by the Collector at the time of calling up the lot for sale, and such further Notification shall be made as the Governor General in Council may direct. Provided however, that in case the sale so restricted shall not realize an amount equal to the arrear due at the time of sale, or there shall appear ground to apprehend that, by reason of the restriction, the future realization of the Revenue will be endangered, it shall be competent to the Governor General in Council, at any time before such restricted sale shall have been finally confirmed, under the rule contained in Section XX. of this Act, to direct the sale to be cancelled, and a new sale of the Estate to be made without restriction. If, subsequently to confirmation, occasion shall arise to bring to sale for arrears an Estate purchased with a restriction of the above description, it shall, at all times, be competent to the Governor General in Council to direct that the mehal shall be sold without any restriction beyond what may have attached to the tenure at the original settlement, or with the reservation before reserved. In the former event, should the purchase-money realized by the unrestricted sale exceed in a large amount the sum obtained at the restricted sale, it shall further be competent to the Governor General in Council to direct a portion, or the whole of the excess, to be paid to the persons whose interests, having been reserved at the first, shall become void at the second sale.

Governor General in Council may reserve under-tenures.

No. 34.

Minute by the Hon'ble Mr. Amos, on the Draft of a new Sale Law, settled by Messrs. Bird and Prinsep : dated 3rd July, 1841.

The object to be attained is that, ordinarily, purchasers may have a sufficient inducement to bid to the extent of the arrears of Revenue for which Estates are sold.

Leg. Cons., 19th July, 1841, No. 26.

Whether the inducement is in the shape of present or future profit, or both, is of no importance, provided only it be sufficient. As to which it is to be observed, that, under a due execution of the Sale Law, the amount of arrear allowed to accumulate before an Estate is sold, ought not to bear any great proportion to the total value of the Estate, independently of any under-leases at insufficient rents. And with regard to under-leases, supposing their rents inadequate, yet commonly the purchaser will not be burthened with them longer than for an average term of ten years. And should they override a great portion of the Estate, be held at insignificant rents, or border upon the extreme period of twenty years, the purchaser will have a fair prospect of setting them aside, as made in contemplation of a Government sale; and the greater the abuse the easier will be the presumption of fraud, and the purchaser's remedy the more speedy and effectual.

The extreme case is purely imaginary, *viz.*, of pepper-corn rents pervading every parcel of the Estate, and lasting for twenty years. The case being purely imaginary, I will do no more than suggest the possibility of a capitalist, even under such circumstances, or perhaps with a slight modification of them, advancing the amount of arrears for which an Estate is sold. Be this as it may, it is very important to observe, that in setting aside leases made fraudulently in contemplation of a sale, Government goes a vast way further than the securing of a profit on a *bid* to the amount of the arrears, which is all that Government is concerned in. For leases will be set aside wherever, in consequence of them, there is any material variation from the full annual value of the Estate; whereas, probably, if the whole Estate were leased out at half the annual value of the property, and those leases were in perpetuity, there might be ample inducement to bid to the extent of the arrears. At least, if this last position be not true *in terminis*, it must be true within

certain limits. For it cannot be supposed that no rents less than such as are equal to the full annual value of an Estate, even though the leases cannot last above twenty years, will operate as an inducement to bid simply to the extent of the arrears. And if we set aside leases only at the point where this inducement fails, we must preserve many which we now propose to vacate.

What are the motives for making fraudulent leases? The owner either gets a sum of money from the lessee, or the lessee is a secret trustee for himself, or perhaps his relative, and it is expected that the lessee will hold upon very easy terms of the purchaser. But, on the other hand, if this is overdone, the lease will be altogether avoided. The mere circumstance of a lease being made shortly before a sale will lead to a scrutiny and comparison between the value and the rent, and thus the owner may incur a double loss,—*first*, he loses the benefit of the lease, or, what is the same for this purpose, his lessee does; and *secondly*, there is little or no surplus of purchase-money to be paid him, the small rent apparent in the registered leases, having deterred purchasers from exceeding in their bids the amount of arrears. Take the case of registered leases at fair rents; the leases stand on a much more secure basis, and the surplus of purchase-money is largely augmented.

The registration of the leases will, as is just observed, raise the amount of purchase-money, in proportion to the amount of rent. But registration will do a great deal more, for by inspection of the register, the purchaser will be led to inquiries from which he may form a good judgment whether particular leases can be supported or not, and upon satisfying himself that a particular lease cannot be maintained, he will increase his biddings accordingly; and, also, in knowing the outside of the prejudice he can sustain from the registered leases, he bids with confidence, because he knows what he bargains for.

As the Draft now stands all leases for which a protection is sought are to be registered, but it is only leases at rents above Rupees 500 about which particulars are to be furnished. I think that when any lease, small or large, is registered, the date and term and the rent should be stated with particularity, the lessee to be afterwards bound by such statement; and I think the measurement, as far as it can be conveniently obtained, should be entered approximately. Let us see how this will work practically. The purchaser sees that he may calculate on the specified rents, which the lessee shall not be allowed to

gainsay; he sees clearly the dates and terms of the leases. Coupling these facts with his own inquiries, he is probably able to judge whether he can set aside any of the leases. He will be assisted even by the approximate measurement, though it be not conclusive against the lessees. For the measurement will not, in practice, be grossly curtailed, when it is seen that misstatements, though not conclusive, will of course, if very wide of the truth, be deemed intentional, and a strong badge of fraud, tending towards the avoiding of a lease.

With all this information, with the certainty of having the Estate clear of all leases after an average of ten years, with a protection against all leases falling materially short of their full annual value, I can scarcely think that purchasers will not ordinarily bid to the amount of the arrears of Revenue, kept down as they will be under the operation of this Act.

I do not think that as an inducement to this extent, *viz.*, "bidding "to the amount of arrears," the purchaser requires further security and information. And though, unquestionably, the better security and the fuller information he gets as to leases would induce him to bid so as to increase the surplus purchase-money above the arrears, yet I think Government are not bound to look after this, and if it was any concern of theirs, I think the accomplishing it by means which should discourage persons from taking under-leases would be prejudicial to the interests of land-owners and obstructive of general improvement, and could not be sanctioned on any principles of justice or expediency. I would not, therefore, furnish the purchaser with an additional security through the medium of the Collector.

According to one plan suggested, the purchaser, besides the security and information which I think is enough to induce him to bid beyond the amount of arrears, is to have what is equivalent to a certificate of the Collector's opinion that a lease is not fraudulent; according to the other plan, he is to have a kind of negative proof, *viz.*, that certain particulars concerning the lease have been submitted to the Collector, and that he has not objected on the ground of fraud. Both these plans leave the purchaser to the security and information of the register, for all leases at a rent under Rupees 500, raising thereby incidentally many nice points of split tenancies, so familiar to English election law. According to the first plan the Collector would probably raise obstacles to many *bond fide* leases; for he might frequently think an actual measurement under his own inspection essential for forming

his judgment; delay, expense, and consumption of public time would be the consequences. According to the second plan, probably the Collector would not object, unless in cases of fraud, which could deceive nobody; but in every case, whether he objected or not, trouble and delay, and perhaps some little expense, must be the consequences. According to the second plan also, a fictitious credit would be given to the cases to which the Collector had not objected; fictitious, unless the Collector investigated every case with the like scrupulosity as under the first plan. I think the second plan would occasion very little, if any, additional inducement to purchasers, whilst it is attended with more than counterbalancing evils. The first plan would no doubt produce great surpluses of purchase-money over the amount of arrears for which Estates were sold, but I do not conceive that it would produce many more sales; whilst, I conceive, it is almost entirely destructive of the proposed alteration of system, which, by protecting leases, benefits owners not less than lessees, and promotes every kind of agricultural improvement.

As to extending the protection beyond twenty years, it is to be observed—*first*, that as the protection of a single day, is a boon of security never afforded before, we are justified in proceeding by cautious steps, and watching, what is yet matter of conjecture, the effect upon purchasers. An average duration of leases for ten years, a probable avoidance of leases running close upon fourteen years where the rent as well as the term conspire to create suspicion, these are circumstances which, in the foregoing remarks, I have deemed of great weight in estimating inducements on the minds of purchasers. I should be afraid of hazarding any opinion on the subject at the present moment, without these auxiliary conditions.

Another view remains of the limitation of twenty years. A rent agreed for to-day may be perfectly unimpeachable, which, in the silent progress of time, or in consequence of local circumstances occurring within a very short period, may become almost nominal. I have had peculiar means of seeing a great deal of college leases and college property in England. By the lapse of time since the dissolution of abbeys, by enclosures and railroads, lands which yield £2,000 a year pay only perhaps £100 in the shape of ancient customary rent. A great part even of this £100 is owing to a law in the time of Elizabeth, that a portion of the rent is payable at the market price of the day on a certain quantity (in proportion to the reserved rent) of corn. To apply this; if

Government in the cases I suggest claimed annually $\frac{1}{20}$ of the £2,000, the supposed annual value of the land, and the Estate were sold by Government for arrears, but subject to the lease at the ancient rent of £100, a year's arrear being £100, no purchaser would be found in such a case, where the arrear and Government payment are supposed to be both equal to the rent, if the lease were perpetual. But with an early prospect of the lease lapsing, a future interest without any present surplus above the Government cess would suit many English capitalists, better than immediate enjoyment on higher terms. They would advance a great deal more than £100 (which is all the Government would care about) if the lease were made only for twenty years, and the land yielded £2,000 a year.

I have only further to draft a Clause for consideration.

Fifthly.—Leases granted in good faith, at fair rents, by a former proprietor, for terms not exceeding twenty years. Provided the leases be in writing and duly registered, and that every registration of any such lease, shall contain the names of the parties concerned, the date of the lease, and the term for which it is made, the stipulated rent and the terms of its payment, and also a statement, according to the belief of the parties, of the extent of land demised, more or less. And every purchaser of an Estate sold for arrears of Revenue shall be at liberty to set aside, by suit in Court, any leases not granted in good faith at fair rents, and in any such suit the register shall be conclusive evidence against the lessee of all matters excepting the measurement, the statement of which in the register shall be considered by the Court along with the other circumstances of the case. But the register shall not be received in evidence to prove any fact contained in it in favor of the lessee.

(Signed) A. AMOS.

No. 35.

Extract from a Minute, by the Hon'ble H. T. Prinsep, respecting the Draft of a new Sale Law, settled by him and Mr. Bird: dated the 8th July, 1841.

I now come to Section XXVII. which contains the provisions in respect to the lapse of under-tenures consequently upon a sale for arrears. It is the impossibility of reconciling what I find in this Section, and especially in the 5th Clause, with my notion of what is just, expedient, or safe for the Government, that has especially compelled me to record this minute.

Leg. Cons. 19th July, 1841, No. 28.

By this Section it is provided, in the words of Regulation XI. of 1822, that the purchaser of an Estate sold for arrears shall, in the permanently-settled Provinces, "*acquire the Estate free from all incumbrances* "*which may have been imposed upon it after the time of Settlement,* "*and shall* be entitled to enhance rents and eject all tenants," except as excepted, *viz.*, *first*, except Talooks and other tenures held at a fixed rent for twelve years before the date of Settlement.

This first exception has come down from 1793, and the reason of it was that the Government declared all Talookdars of twelve years' standing at the time of making the Decennial Settlements, afterwards made perpetual, entitled to a settlement at the rate of the rent of the twelve years. Having provided this as a rule of the Settlement, the Government gave of course similar protection to those Talookdars and others, who, being left dependent on a large Malgoozar, might, through his default and a sale, have to come under terms with a purchaser from Government, claiming to exercise the same rights as the Government did at the original settlement.

Secondly.—The second class excepted is tenures existing since the time of the perpetual Settlement, which have not since been proved liable to increase of rent.

Thirdly.—The tenures of koodkasht or kudeemee ryots having rights of occupancy under the Regulations in force. There is an omission in this Clause of the words "at fixed rent," or "at rents "assessable according to fixed and known rules."

I have nothing to object to these ancient tenures being protected as proposed, nor do I object to the 4th Clause, which provides for building

leases for gardens, manufactories, mines, clearing of jungle, and other purposes manifestly beneficial and creative of fresh assets to an Estate, or such as obviously are in their nature perpetual. In such cases, if the new purchaser gets the fair rent of the land prior to its being turned to such purposes, he gets all that the Government had a right to look to as the security for its Revenue. The new value created ought not to pass to the purchaser as a part of the Estate hypothecated to the Government by the Act of Settlement. But Clause 5 proceeds as follows :

Fifthly.—"Farms granted in good faith, at fair rents, by a former proprietor, for terms not exceeding twenty years, under written and duly registered leases. Provided that when the stipulated rent of such farms exceeds Rupees 500, a notice, specifying full particulars of the position, rent, and estimated area of the land, shall be given in writing by the *parties* in every case to the Collector, within one month from the date of *the lease*,* and the Collector shall be at liberty to object to the same, in the event of his seeing reason to believe that the security of the public Revenue will be materially affected thereby. The exception declared in this Clause shall not extend to leases objected to by the Collector, by a Notification to be fixed up in his Office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties. Provided also that a purchaser of an Estate at a sale for arrears of Revenue shall be at liberty to sue in Court to set aside such *farms*, on the ground of any failure of the conditions stated in the first sentence of this Clause as essential to its validity."

* This makes the rule prospective only, which I believe was not intended by the framers of the Clause.

Every part of this Clause I look upon as objectionable in the highest degree, and subversive of the principle by which alone the Government has maintained its Land Revenue so long. In the first place protection is given to the Ijaradars, or mere Tuhseel people, who took their lease with no speculation of cultivating and laying out money in improvements, but merely on a calculation of what they could grind from other undertenants by skill in Regulation processes and chicanery, and perhaps, even by violence. The engagement by which the ryots were handed over to such a farmer has only to be registered, and it compels the new purchaser to deal with the ryots only through the same agency, to the ruin perhaps of both. Such leases or engagements would be sure to be registered, because the lessee will know the Government Regulations

and Acts, and the defeating of a sale purchaser or of Government, if the lot is thrown on its hands in consequence, will have been part of the speculation. Surely it can serve no good purpose with Government, or with what the preamble of the law calls the agricultural community, to maintain such leases of management, and to perpetuate the agency of such middle-men.

Secondly.—The Clause maintains leases at fair rents for *twenty years or less*, assuming of course that the condition of *fair rents* will be a sufficient security for Government, under the power given to institute a suit to set the lease aside if not *fair*, that is if not sufficient to give such security. Now if this assumption be just, if there is no danger to the Government Revenue so long as rents are *fair*, upon what principle of right can the Government absolutely eject and deprive of his farm the man who has taken a Talook honestly, at *full* rent in perpetuity, and has an interest that will ensure his regularly paying that full rent, and leave in possession the temporary holder of twenty years or less to intervene between the new proprietor and his cultivating tenants for the remainder of his lease? The Government has declared that Zemindars may alienate in perpetuity, or for as long as they please, but their alienations must not put its over-riding Revenue in jeopardy. This has been the principle since 1793, and heretofore the Government safe-guard has been applied by providing that all such alienations shall be revised whenever the Estate falls to sale for arrears. The Government, however, by the Clause as now drawn, would say—The cancelment and revision of leases after sale is not necessary for its security: for twenty years the Government will be satisfied with such security as the power of proving the rent not fair may afford: but that security is as nothing if an under-tenant has a lease for more than twenty years, though the law has equally permitted the granting of longer leases, these leases, therefore, must be cancelled. This surely is incongruous; either the suit to set aside leases on grounds of insufficient rent is a good running security for all time, or it is no security at all; it cannot be a security that will last only for twenty years, and surely the framers of this Clause cannot hold it out as matter of indifference whether the Revenue is secured or not for twenty years, because after that period, at least, it will be sure to be restored by a cancelment.

Thirdly.—It may be said that the Government Revenue is so small a share of the Rent produce of the land as to need no safe-guards, and therefore that those imposed by the Regulations of 1793, 1799 and

1822 may now be relaxed. But is this so? I know only of one criterion by which to decide this question, and that is to ask whether do Estates sold for arrears always yield a large surplus beyond the arrear? Are Estates *never* bought in by Government for want of biddings, and, when so bought in, are the assets *always* found more than sufficient to cover the annual Revenue? The Government of India does not see returns of these khas-managed Estates, nor has it had any report before it since I have been in the Council, of the number of Estates bought in and so managed, or of the result. If those who advocate the maintenance of leases after a sale can show the affirmative of the above questions, they will have an argument in favor of relaxation. But my impression is that within the past five years many *more* Estates than heretofore have fallen to Government for want of purchasers, and that in almost every case the khas collections upon the rent-rolls were found *insufficient* to pay the Revenue. The attention of the Bengal Government has recently been turned much to khas-managed Estates, and Mr. Halliday ought therefore to be able to produce readily the information that will show whether my impression is erroneous or not. If the khas management upon the old proprietor's jummabundee has been ruinous hitherto, it cannot surely be wise to bind Government or its purchaser to that jummabundee, and lessen the power of correction. The Collector's Officers have had much more power of raising the rents to the full, under existing laws, than they will have if this Act passes, with Clause 5 Section XXVII. unaltered; still the proper jummabundees have not been made, or have very rarely been so. With this fact staring us in the face, can it be good policy to cut from our Officers, as well as from auction purchasers, the power of making any jummabundee except after proving the insufficiency of the former lease rents by regular suits?

Fourthly.—It may be said, however, that the Clause provides further checks against under-rent than the right of suit to contest the sufficiency. These must be examined, for stress has been laid upon them.—*First*, the leases must be in writing and duly registered; *secondly*, if stipulating for a rent exceeding Rupees 500, notice must be given with particulars to the Collector, who may, within one month of such notice, object, and leases so objected to are not to have the privilege of exemption after sale. First with respect to registry according to existing rules. This is a mere act between parties, the deeds are copied into books on acknowledgment of them by the signers; no inquiry takes place and no publication. The use of such registration is to preserve a record of the transaction in case

of the loss of originals, and upon payment of a fee of one Rupee strangers may inspect the books, or any particular deed in them. It is argued that such registration will ensure that the leases are not secretly granted for fraudulent purposes, and therefore is a security. At present it is not usual for a Zemindar to register any of his ryot's pottahs, the expense of the fee, two Rupees, upon each deed, is too high. He is of course indifferent whether the leases stand or not after his own loss of the Estate, and except to raise a fine would not think of proposing registration; consequently those leases only would be registered, if the present Clauses pass, which might be intended to defeat the effect of a sale. The law, therefore, would give no protection to ordinary *bonâ fide* leases, but would give a facility for protecting such as least deserved protection. It is true that a *bonâ fide* leaseholder might equally seek the protection with one intending fraud. But the deed must be registered by the person who executes it, and his co-operation will be sure to be given to the fraudulent one, if he has received a fine or *douceur*, in consideration of a reduction of the rent. The registry *per se* can be no evidence of the rent being fair, it is merely evidence of the transaction; and though the deeds were ordered to be published in the Kutcherries instead of being merely written in a sealed book, to which access can only be obtained on paying one Rupee, how would the world be the wiser, from seeing the details of a lease, as to whether any fine or *douceur* had been levied besides, and whether the rent reserved was fair and full or not? The obligation to specify the extent of ground is not a condition to registration, nor is it made a condition of the benefit given by this Clause, and most of the leases of this country, with exception to ryottee ones, do not contain such specification. All farms of management are of necessity by Villages, Talooks, Pergunnahs, or such divisions, without reference to area, and it is against the maintenance of such, under the condition of mere registration, that I enter my protest.

But besides registration, notice must be given to the Collector of leases with a rent exceeding Rupees 500, and he may object within a month. This power of objecting seems to be resolved upon, as likely to be effective in preventing leases upon fine, with low rent, and with the mention of fine suppressed.

The notice to Collector is certainly an additional publication, and so far an additional security against hole and corner transactions; but if it be supposed that the Collector will have time to make special inquiry into the merits of every lease so notified, and so to use a sound dis-

cretion, the supposition assumes either that very few notifications will be given, that is, that the leases requiring protection will be in no proportion to the sales for arrears, which implies that the law will be of very little service to any, or that the Collector has in his office the means of at once saying whether the rent laid upon any Village, Talook, or lot of Villages is fair and proper. The fact that the Collector has no such detailed information in any district of the permanently-assessed Provinces is too notorious to need more than bare mention, therefore the Collector must, as a matter of course, either pass all without objection, or object to all without assigning a reason: whichever he does he equally defeats the purpose of the law.

As tests, therefore, of the fairness and sufficiency of the rent of leases, neither registration nor notice to Collector is worth anything, for in neither process will there be the possibility of any inquiry and examination for comparison of assets with the proportion of produce agreed to be paid as rent. The condition of registration and notice is, therefore, no safe-guard against possible collusive leases; they are mere words thrown in to disguise the palpable effect of the Clause, which will be to leave to Zemindars full and free power to lease as they please hostilely to the Government and to its purchaser, under the sole condition that after a sale for arrears Government or its purchaser may institute an action to prove the rent insufficient, with the whole onus of proof on the plaintiff, and without any power given of measuring lands for comparison of the actual found area with the rent specified in the written lease.

The experience and practice of our Revenue Administration since the perpetual Settlement was made, are opposed to the grant of any such power to Zemindars under settlement with Government. The Regulations passed since 1793 have uniformly maintained the necessity of a revision of leases at each sale, with enlarged and nearly absolute power to Government, or to the auction purchaser; and I may ask, would the Duke of Devonshire, or any one having large estates in England or Ireland, recognize in their lessees, even though they were holders of leases in perpetuity, the right of sub-letting, with the condition of the sub-lessee's lease standing after the original lease had, for any cause, been forfeited?

Fifthly.—The clause for upholding sub-leases proposed for Bengal and the permanently-settled Provinces is not to be extended to the North-Western Provinces and other unsettled districts. If it is good in principle in one division why is it not applied to all? The Western

Board, however, have repudiated it, knowing it to be inconsistent with the scheme of our Revenue Administration. It is proposed for Bengal, upon a vague notion that security to leaseholders will lead to wonderful improvements of agriculture. There is no doubt that certainty of property is essential to all improvement, but is that certainty to be gained by maintaining all bad titles, and by recklessly creating in every landholder a power of creating titles? Every man looks of course to the title he purchases or takes on lease; he must see that it is good before he makes his bargain, and must not be encouraged to hope that what he takes, subject to a liability, will be freed from that liability by an act of the Legislature. I am for giving leaseholders a means of securing their title similar to that conferred on those who take building leases in Garden Reach from Zemindars, and upon a principle, therefore, fully recognized by our Revenue system. Let the Collectors have the power, subject to sanction by a Commissioner, of certifying upon a lease that the rent is sufficient for the security of the Government Revenue; and such a certificate may give protection against the effect of a Government sale, but it should be a condition that the extent of land and rate per acre or beegah shall be declared and specified in the lease, and a discrepance in the real extent, compared with the specification, should either vitiate the lease, or render the tenant liable to the difference, accordingly as it might be proved intentional or unavoidable and accidental. Such a Clause I proposed in lieu of that which now stands in the Draft of Act, but it was rejected, I know not for what reasons. I still think a rule to the effect might very advantageously be introduced, and I see no difficulty in the Board or Government laying down a broad rule that, for the security of the Revenue, a certain rate per beegah or per acre, taken of course at a maximum of the usual agricultural rates for each district, is sufficient, and Government has no desire to cancel leases which specify such rents.

This is quite a different thing from a general uncontrolled power of leasing to agriculturists or to middle-men or to lease-jobbers in any form, and with specification of area or without, under the mere check of a civil action by Government, or by an auction purchaser, to prove such a vague thing as that the rent is not *fair*. The Clause does not say fair with reference to what: to neighbours' rents; to the general ratio of Government Revenue; to the Mofussil rents of the particular estate; to rate per Beegah according to cultivation and productiveness, or to Pergunnah rates; and, as I have before noted, it gives no power

of measuring: all this is to be argued in the equity suit the purchaser has to bring against each leaseholder, and if he wants a measurement he must move to have an Ameen deputed by Court to measure, as a Master in Equity would, hearing objections at every step, and referring upon them for orders to the Court deputing him.

Sixthly.—The proposition for maintaining leases after a sale for arrears with the limit of twenty years, has been compared with the rule of English law which allows a tenant for life, or a churchman, to grant leases for that period. It is necessary to expose the fallacy of this comparison, and to show that there is no analogy whatever between the cases.

By the common law of England, I write of course under correction of our legal associate, persons seized of an Estate might let leases to endure so long as their own interest lasted, but *no longer*; a tenant for life, therefore, could give no lease to bind his successor. But by a statute of Henry VIII. certain tenants for life, and amongst them persons seized of an estate of fee simple in right of churches, were enabled to grant leases for three lives, or for twenty-one years, which were to hold good against their successors. It is argued that if the revenues of churches require no further security than this limit of twenty years to the leases, the same rule ought to be good and sufficient protection to the Government Revenue, as derived from land in this country.

The protection is given in England by requiring that the most usual and customary form of rent for twenty years past shall be reserved, with the right of impeachment of waste, and that the lands or tenements are such as are ordinarily let for twenty years. The consequence of this law has been that Church lands are ordinarily leased at low rents, the same that have existed of old, with fines levied for renewal at the end of each twenty years.

The income of the incumbent churchman, instead of being equable at the maximum rent of the lands with which the church is endowed, is a moderate or even a low rent with fines at each lapse: and the law conceives that this income is sufficiently protected by requiring *that the period of lapse shall not be thrown beyond twenty years.* Now I would ask what analogy there can be between the protection required by Government *against the* acts of those *who pay its rent or Revenue,* and the protection given by the law to future churchmen against the acts of the incumbent in *the receiving of his rents?* There would be a complete

analogy if it were a question to restrain the *Government itself* from granting leases or making settlements for more than twenty years, for fear of an alienation of the resources of the State to the prejudice of future Governments. And if the law had been prohibiting *tenants* of the church from granting leases for more than twenty years, and upholding those granted for that term *against* a successor to the churchman who gave the first tenant his lease, or against the grantor of the first lease himself, in case of its lapsing or being cancelled, the case would be the same as provided for by this clause. But who in Europe would think of proposing a law so to uphold the *sub*-lessees? And yet that precisely will be the principle and the effect of the Clause I am discussing, which upholds the sub-tenants of twenty years after the first holder under the Government has forfeited his interest and it has been transferred to another for his default.

But there is another light in which this may be considered. The limit of twenty years to church leases operates as the index for regulating the *proportion* of *income* to be taken in annual *rent*, and that to be taken in *fine*. Is the Government prepared to give the sanction to *leases with fine* that the law of England allows in the case of church lands, with the difference that the *Government will not get any benefit from the fine*, whereas the church incumbent in England draws the whole? I fancy no one acquainted with our Revenue system is prepared to maintain that it is expedient to continue the lease given by a spendthrift Zemindar for a large consideration in the shape of *fine*, after his continued dissipation has brought himself to ruin, and his Estates to auction sale. The argument that the auction purchaser will redeem the Estate after twenty years, when these leases of the spendthrift will lapse, would be good *if in the interim he had the reserved rent to live upon for present income as the churchman has*. But the whole of this reserved rent may be insufficient to pay the demand of the Government Revenue, which admits of no delay, and must be realized by a re-sale, so as inevitably to throw the Estate into the Collector's hands, with impaired assets, till the period when the leases will lapse.

Notwithstanding the length to which the above remarks have run, I have by no means exhausted my objections to this particular Clause, and I feel entitled to give a strong opinion on the subject, because I gave the question much consideration while myself engaged on preparing the Draft of Regulation XI. 1822, which is about to be superseded; and because I was before that specially employed as a Commissioner to

inquire into a similar question which arose out of the under-tenures granted by the Rajah of Burdwan, and I framed in consequence the Regulation which now stands to fix the constitution and relations of those tenures to the Zemindar. I do sincerely hope that upon consideration of the above remarks, this 5th Clause of Section XXVII. of the Draft will receive modification, if it be not omitted altogether; and as a reason for gravely considering a question of this importance, I would observe, that if once a law be passed which recognizes the stability of leases after sale for arrears, it will be very difficult at any time hereafter to modify such a law; for the leases will have been given under assurance of the law, and may have passed by assignment with values regulated according to the state of the law; and it is a harsh, if not an inequitable thing, for the legislature to destroy by another Act a value so recognized after consideration has been given for it.

Regulation VIII. 1819.

A very few words will convey all that I have further to state on the subject of the Draft of Act before the Council. Section XXVIII. fixes the powers of purchasers in respect to under-lessees in the North-Western Provinces. The rule is much the same as that of Regulation XI. 1822, and I have only to observe that the exception for building and other leases ought to be made to conform to that for the same class of tenures in Clause 4 of Section XXVII.

Section XXIX. re-enacts the provision of Regulation XI. 1822, which reserves to the Government in special cases the right of ordering sale of an Estate, without the privilege of cancelling under-leases to the auction purchaser. The Section has been restored at my suggestion, but needs to be adapted to the new constitution of the Government of India. The words Government of the Presidency of Bengal and Lieutenant Governor or Governor of Agra, must be substituted for Governor General in Council.

No. 36.

Extract from a Minute by the Hon'ble W. W. Bird, respecting the Draft of a new Sale Law, settled by him and Mr. Prinsep: dated the 19th July, 1841.

Lastly.—With respect to Clause XXVII., the provision which Mr. Prinsep and I at our conference proposed to substitute* for the fifth exception was not approved of, and the alteration was made, referred to in that Gentleman's Minute of the 8th instant, to which neither of us agreed. At the consultations on Monday last, the 12th instant, the Clause again came under discussion, and was altered, I believe at my suggestion, to what it now is, which will obviate I hope in practice many of the objections so forcibly stated by Mr. Prinsep. Considering the great difference of opinion which exists upon the subject, I do not think we can come to any other conclusion that will approach nearer to the object which all of us have in view, namely, the protection of *bonâ fide* leases from undue interference, and the security of the public Revenue from being deteriorated by means of fraudulent alienations.

Leg. Cons. 19th July, 1841. No. 30.

* *Fifthly.*—Farms granted with the condition of exemption from cancelment upon sale for arrears under special sanction of the Revenue Commissioner and the Sudder Board.

No. 37.

Extract from a Minute by the Right Hon'ble the Governor General, (Lord Auckland,) respecting the Draft of a new Sale Law, settled by Messrs. Bird and Prinsep: dated the 19th July, 1841.

Section XXVII., Clause 5. The rule in this clause respecting a security to farming leases under certain circumstances in the event of a sale, is regarded by me with peculiar interest. The indiscriminate destruction of under-tenures by a sale for arrears has always been considered as one of the chief blemishes of our system, and I earnestly hope, that this experiment to give some certainty and security to leases, may prove

Leg. Cons. 19th July, 1841, No. 32.

successful. We propose to give stability, on the conditions specified, for 20 years, and not to perpetual leases, because, at least as a first step, it may be unwise to run the hazard of error in regard to a perpetual tenure, which we may yet be justified in incurring for a limited term, and because 20 years may fairly be considered a sufficient term to admit of good return for capital employed upon land. Under the precautions provided, I do not anticipate any serious danger to the Revenue from such leases; while to have required in every instance a previous approbation from the Collector, would, it may be feared, have probably nearly defeated the object of the Clause. It is exceedingly likely that experience may show that the provisions of the Clause might have been much amended; but as a foundation of what I hope will be a very beneficial change, I cordially vote for its being passed in its present form, which has been settled after repeated and careful discussions.

No. 38.

Extract from Act No. XII. 1841, *"An Act for Amending the Bengal Code, in regard to Sales of Land for arrears of Revenue."*

Leg. Cons. 19th July, 1841, No. 33.

Enhancement of rents in Bengal, &c.

XXVII.—And it is hereby enacted, that the purchaser of an Estate sold under this Act for the recovery of arrears due on account of the same, in the permanently-settled districts of Bengal, Behar, Orissa and Benares, shall acquire the Estate free from all incumbrances which may have been imposed upon it after the time of settlement, and shall be entitled, after notice given under Section X. Regulation V. 1812, to enhance at discretion, (anything in the existing Regulations to the contrary notwithstanding,) the rents of all under-tenures in the said Estate, and to eject all tenants thereof, with the following exceptions:

First,—Tenures which were held as istimraree or mokurreree at a fixed rent, more than 12 years before the permanent Settlement.

Secondly,—Tenures existing at the time of the Decennial Settlement, which have not been, or may not be proved to be liable to increase of assessment, on the grounds stated in Section LI. Regulation VIII. of 1793.

Thirdly,—Lands held by koodkasht or kudeemee ryots, having rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the Regulations in force.

Fourthly,—Lands held under *bonâ fide* leases, at fair rents, temporary or perpetual, for the erection of dwelling-houses, or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases.

Fifthly,—Farms granted in good faith, at fair rents, and for specified areas, by a former proprietor, for terms not exceeding twenty years, under written leases, registered within a month from their date. Provided that a written notice, specifying full particulars of the position, rent and area of the lands, the terms of the lease, and the names of the parties, shall at the same time be given by the latter to the Collector in every case, and the Collector shall be at liberty to object to the same in the event of his seeing reason to believe that the security of the public Revenue will be materially affected thereby. The exception declared in this Clause shall not extend to leases objected to by the Collector, by a Notification to be fixed up in his Office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties. Provided also, that a purchaser of an Estate at a sale for arrears of Revenue, shall be at liberty by suit in Court to set aside all such farms, although the same be under written and duly registered leases, and although such notice may have been given as aforesaid, if the same shall not have been granted in good faith, at fair rents.

Under-tenures elsewhere.

XXVIII.—And it is hereby enacted, that the purchaser of an Estate sold under this Act for the recovery of arrears due on account of the same in Districts other than those mentioned in Section XXVII., shall acquire the Estate free from all incumbrances which may have been imposed upon it after the time of Settlement, and shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or Assignees of the original engager, as well as all agreements with ryots or the like settled or created by the first engager or his representatives, subsequently to the last Settlement, as well as all tenures which the first engager may, under the conditions of his Settlement, have been competent to set aside, alter or renew, saving always and except *bonâ fide*

leases of ground for the erection of dwelling-houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagements shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale, to demand a higher rate of rent from any persons whose tenure or agreement may be annulled as aforesaid, than was demandable by the former Malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former Malgoozars from the old established rates, by special favor, or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the Pergunnah, Mouzah, or other local division, such persons are liable to be called upon for any new assessment, or other demand, not interdicted by the Regulations of Government.

Local Government may reserve all under-tenures.

XXIX.—And it is hereby enacted, that it shall be competent to the Local Government, when it shall seem proper, at any time before a sale for arrears shall have been actually made, to direct it to be made subject to the leases, assignments, or other incumbrances, with which a proprietor in possession, his ancestors or predecessors, may have burthened his assessed Estate, or to such of them as shall appear proper. In all such cases, notice of the condition imposed by the Local Government shall be given by the Collector at the time of calling up the lot for sale, and such further Notification shall be made as the Local Government may direct. Provided, however, that in case the sale so restricted shall not realize an amount equal to the arrear due at the time of sale, or there shall appear ground to apprehend that, by reason of the restriction the future realization of the Revenue will be endangered, it shall be competent to the Local Government, at any time before such restricted sale shall have become final and conclusive, in the manner laid down in Section XX. of this Act, to direct the sale to be cancelled, and a new sale of the Estate to be made without other restrictions than those contained in the exceptions specified in Clauses 1 to 5, of Section XXVII. of this Act. If after the sale has become final and conclusive, occasion should again arise to bring to sale for arrears an Estate purchased with a restriction of the above description, it shall,

at all times, be competent to the Local Government to direct that the Mehal shall be sold without any other restriction than those contained in the exceptions specified in Clauses 1 to 5 of Section XXVII. of this Act, or with the reservation before reserved. In the former event, should the purchase money realized by the unrestricted sale exceed in a large amount the sum obtained at the restricted sale, it shall further be competent to the Local Government to direct a portion, or the whole of the excess, to be paid to persons whose interests, having been reserved at the first, shall become void at the second sale.

FURTHER PAPERS

REGARDING THE

CONSEQUENCE TO UNDER-TENURES

OF THE

SALE OF AN ESTATE FOR ARREARS OF REVENUE.

No. 1.

FROM J. MACKENZIE, ESQUIRE,
Of Jingergatcha, Jessore,

TO J. P. GRANT, ESQUIRE,
Secretary to the Government of Bengal.

Dated Calcutta, 4th December, 1849.

SIR,

I have to request that you will do me the favor of submitting, for the consideration of his Honor the Deputy Governor, the following statement of the difficulties which have to be contended with by myself and other parties, engaged in the plantation and cultivation of Date trees in Jessore, and the neighbouring Districts.

The produce of Sugar from the Date tree has now become one of the principal staples of three or four large Districts in Bengal, and large as the extension of the cultivation has been in the last twelve years, nothing but the uncertainty of the tenure of the land has prevented its being enormously increased.

You are aware that the Date tree does not yield juice, fit for the manufacture of Sugar, until about seven years after it is planted, but that it will last from thirty to fifty years. The planter therefore does not get any return until after the lapse of a long period and the expenditure of considerable outlay. The Date flourishes best in sandy and other soils, which but for this cultivation would be barren and unproductive, and plantations would consequently be most effectively made in isolated tracts, over a large extent of country. Under the present system, the only mode by which a planter can procure lands is by taking

pottahs from the Zemindar for specific areas, and though these leases would be binding on any one inheriting the Zemindaree, or becoming the proprietor by private purchase, still, in the event of a sale for default of payment of the Revenue, no pottah could be drawn under existing Regulations that would prevent the purchaser at such a sale from demanding rents for each tree, at such an exorbitant rate as virtually to take all the profit, and destroy the property of the planter.

Though Government sales of Estates have not been frequent of late years, it is a contingency to which all holders of tenures under Zemindars are liable, preventing the investment of capital and any attempt to permanently improve the country. Moreover it is far from improbable that cases will occur when the Zemindar, seeing that large tracts of land, formerly unproductive, which he had leased to the Date tree planter, now yield a handsome return, may avail of the power which the Regulation affords to cancel these leases, by a collusive transfer of his Zemindaree to his own relations or dependants, and which can be easily managed by allowing the Estate to run into arrears of Revenue, without its being in the planter's power to prove the fraud, or at any rate not until after tedious and expensive litigation, during which time he would be deprived of his property.

In Section XXVI. of Act I. of 1845, the fourth Clause provides that lands held under "*bonâ fide* leases for *gardens*, clearing jungle, or like "beneficial purposes," shall not be liable to be assessed at higher rents even after a sale by Government. But it appears doubtful if this Clause would apply to Date Plantations as a commercial speculation, though if Government are of opinion that it would do so, a declaratory Act to that effect would at once give confidence and remove every difficulty.

The fifth Clause also provides that "leases in good faith for terms "not exceeding twenty years" shall not be liable to be violated, but, as already pointed out, this would not suit the Date tree planter, who would chiefly look for his remuneration after the utmost term allowed for a lease, and who would receive no return for one-third of that period. Were this Clause altered so as to render the leases good so long as the lands remained in Date cultivation, the necessary security would also be given to the planter. It cannot be necessary to show that such an enactment, far from endangering the public Revenue, would, on the contrary, by materially increasing the value of Estates, facilitate the realization from the Zemindar, whose property would be improved, and who would have permanent Farmers to look to for rent from lands

hitherto uncultivated and unproductive, whilst the extension of the plantations would afford employment to almost every class of the people.

The present rules, which require the registry of leases as soon as granted, with notice to the Collector of the District, and that they should provide for the payment of fair rent, ought to be sufficient security to Government that their Revenue could not in any way be endangered.

In asking for a specific Regulation for Date tree land, I ground my request on the fact that, whilst nearly all other crops are annual, so that the farmer reaps the fruit of his labors in one or at most two seasons, the Date requires many years before it gives any produce; and certainty of tenure and undisturbed possession are essentially requisite to the planting being carried on to a large extent, and with vigour and efficiency.

That even now it is a business of no trifling importance, the returns obtained by Government of its present extent amply prove; and since unhappily the attempts to cultivate and manufacture Sugar from cane under European superintendence, and by improved machinery, have in every instance failed, it must be well worth while to encourage by every means the new and permanent source of supply which the cultivation of the Date offers.

From the data given in Mr. Robinson's "Sugar Planter's Manual," and from the result of my own inquiries and experience, I feel confident in stating that a beegah of suitable land planted with 100 Date trees would, when in full bearing, yield annually fifty maunds of goor, which would give one-third of that quantity as the produce in dry sugar or "pucka chenee."

One acre would therefore produce upwards of a ton and three quarters of Sugar, which is considerably beyond the average which sugar-cane yields in the West Indies and elsewhere; and even at a lower rate of produce, 300,000 beegahs of Date trees would give annually 1,50,000 tons of Sugar; about half the consumption of Great Britain; which would increase the exports of the article from this country, from its present limit of eighteen lakhs of maunds, to forty-five, to fifty lakhs of maunds annually, reducing the price to the Home consumer, whilst at the same time it in every way benefits this country.

I have the honor to be, &c.,

J. MACKENZIE,
Of Jingergatcha, Jessore.

No. 2.

FROM W. SETON-KARR, ESQUIRE,
Under-Secretary to the Government of Bengal,

To G. PLOWDEN, ESQUIRE,
Secretary to the Sudder Board of Revenue,

Dated Fort William, the 26th December, 1849.

SIR,

Revenue. I am directed by the Hon'ble the Deputy Governor to forward the accompanying copy of a letter, dated 4th instant, from Mr. J. Mackenzie, a gentleman residing in the District of Jessore, and to request that the Board will favor Government with their opinion on the very important question to which it relates.

I have the honor to be, &c.,

W. SETON-KARR,
Under-Secretary to the Government of Bengal.

No. 3.

FROM G. PLOWDEN, ESQUIRE,
Secretary to the Sudder Board of Revenue.

To J. P. GRANT, ESQUIRE,
Secretary to the Government of Bengal, Revenue Department.

Dated Fort William, the 28th May, 1850.

SIR,

I am directed by the Sudder Board of Revenue to acknowledge the receipt of Under-Secretary Mr. Seton-karr's letter of the 26th December last, calling for their opinion on the suggestions of Mr. Mackenzie, of Jingergatcha, in Jessore, for giving greater security to leases of land taken from Zemindars for Date Plantations.

Mis. Dept.
Present.
E. M. Gordon, and H. Ricketts, Esquires.

2. In reply, I am directed to intimate, that prior to forming a decided opinion, the Board considered that it would be advantageous to learn the sentiments of the experienced Officers whose names are given below on the margin, not only on the immediate subject of Mr. Mackenzie's letter, but also as to its bearing on other descriptions of Plantations, such as Cocoanut, Betelnut, Coffee and Mulberries, and, in short, all agricultural enterprise. The questions propounded for their consideration were, whether leases for Date Plantations were protected by the provisions of Clause 4, Section XXVI. Act I. of 1845?—and whether such leases and others, in like manner productive of agricultural and commercial advantages, were entitled to special protection, and, if so, in what way, and to what extent it should be afforded?

Mr. Mills, dated 13th February last.
Mr. A. Forbes, dated 13th February last.
Mr. Sconce, dated 19th February last.
Mr. Mytton, dated 4th March.
Mr. J. S. Torrens, dated 13th March.
Mr. Davidson, dated 16th March.
Mr. J. Alexander, dated 1st ultimo.
Mr. Trevor, dated 13th ultimo.

3. The replies of the Officers consulted are herewith forwarded, in case reference to them should be desired. An abstract of the replies will be found embodied in Mr. Ricketts' Minute of the 10th Instant.

Mr. Gordon's Minute, dated 29th ultimo.
Mr. Ricketts' Minute, dated 10th instant.
Mr. Gordon's Minute, dated 17th instant.
Mr. Ricketts' Minute, dated 17th instant.
Mr. Gordon's Minute, dated 18th instant.

4. The several Minutes of the Members on the subject are herewith submitted as per margin, for the consideration and orders of the Hon'ble the Deputy Governor of Bengal.

5. Both Members, it will be seen, are in favor of compliance with Mr. Mackenzie's application, and of extending the indulgence to the other cases enumerated above; but they differ on the details of the question.

6. Mr. Gordon is of opinion that Plantations are protected by Clause 4, Section XXVI. Act I of 1845; but if any doubt should remain on this point, he thinks it would be easy to extend the provisions of the Clause to leases for the purposes abovementioned.

7. Mr. Ricketts, on the other hand, does not think that Plantations are protected by the existing Law, so effectually as to give any confidence to farmers. He would protect them completely under all contingencies, without any of the existing reservations respecting "*bonâ fide* "leases and fair rents." He would have all leases granted by Zemindars registered, and with this view he proposes certain modifications of the

Law, which will be found at the end of his Minute of the 10th Instant. Mr. Ricketts also suggests that it would be useful if a Committee were appointed to take the evidence of Zemindars, Farmers, Speculators, Merchants, and others, before adopting any legislative or practical measures.

I have, &c.

GEO. PLOWDEN,
Secretary.

SUDDER BOARD OF REVENUE,
The 28th May, 1850.

P. S.—Please to return the original enclosures.

No. 4.

Minute by E. M. Gordon, Esqr., Member of the Sudder Board of Revenue: dated the 29th April, 1850.

I desire to record the following remarks on the subject of Mr. Mackenzie's application. After having read these reports, and after having given as much consideration to the matter as the other calls upon my time admit of, I think we may fairly assume, that it is not a lease of rents; that is, a lease of lands already cultivated, or long in the occupation of other ryots, that Mr. Mackenzie wants; but a lease of lands now uncultivated, and which he would cultivate, raising from them a produce, the value of which, in the long run, would remunerate him for the capital he laid out on the undertaking.

At all events, it was of this latter kind of enterprise that the Board expressed itself favourably, in its letter to the Officers it consulted.

The questions, then, for consideration seem to be, can capital now be safely applied to the extension of valuable produce under the existing Sale Law?

If it cannot, is it desirable that the law should be altered, so as to admit of the safe application of capital in the manner proposed?

It appears to me, I confess, with reference to the remarks of Mr. Mytton, that the leases would be protected under the provisions of

Clause 4, Section XXVI. Act I of 1845. I understand the lands in Jessore, now held by ryot, under Date cultivation, are designated Kajoor Baghan. But at all events, if any doubt should remain on this point, it would be easy to extend the provisions of the Clause to leases for the purposes mentioned in our Circular letter. Mr. Forbes holds, that under the circumstances supposed, leaseholders would be protected as koodkasht or kudeemee ryots. Strictly speaking a koodkasht ryot is a cultivator whose house is on the Estate, the land of which he cultivates. Again long continued occupation is implied in the term kudeemee, as applied to a cultivator. Neither of these conditions might apply to the leaseholders of whom we are treating; but there is much truth in what Mr. Forbes writes, I think, and Clauses 3 and 4 together, under the Section cited, would protect these leaseholders, as it seems to me.

For the security of the Government Revenue, it seems to me indispensable, that the leases should be at "fair rents," and that the auction purchaser should have the power of enhancing them to an adequate amount, through the Courts, on proof of inadequacy. Fair or adequate rents should be held to be the rates paid* *at the time the leases were granted* for similar land in the District, within the Court's jurisdiction. It would be well, too, I think, that inquiries for eliciting the fairness of the rents on suits brought by the auction purchaser, should be conducted under the supervision of the Revenue Authorities, at the cost in the first instance of the plaintiff.

* Such a condition would effectually prevent an auction purchaser from depriving a capitalist of the fruits of his labor, by laying the assessment on the produce, and not on the land.

Under these restrictions, I am prepared to recommend a compliance with Mr. Mackenzie's application, and to extend the indulgence to the other leaseholders enumerated in our Circular.

I do not agree with Mr. Sconce in thinking the case comes under Clause 5, Section XXVI. of Act I. of 1845; nor do I think the previous interference of the Revenue Authorities advocated by him advisable. It would operate injuriously as a clog upon such transactions, and the work, with reference to the want of leisure possessed by Collectors, would, I think, be ill-performed.

The Remembrancer objects to the principle of long or permanent leases, as infringing on the rights of Zemindars. By this term he must mean the purchasers of Estates for arrears of Revenue. He cannot mean that the rights of existing Zemindars are taken away by a privilege, which adds to their rights, and which enables them to increase the value of their

Estates by contracts, which, but for the privilege in question, would not be entered into by tenants. He cannot mean the successors of existing Zemindars by gift, private purchase, or inheritance, for *their* rights are those of the person from whom they have acquired them.

But what rights can auction purchasers possess other than those conferred on them by the Legislature, prior to the date of purchase? To talk of a violation of rights, in such a case, is to create a confusion of ideas. The Remembrancer's objection, at bottom, seems to be, that it is inexpedient that the auction purchaser should have the power to break all engagements of the nature of leases, entered into by the former proprietor of the Estate and his tenants. By way of overcoming the objection that such a principle would effectually stop the investment of capital in extending the growth of valuable produce, Mr. Trevor would grant compensation to the tenant, who should be ousted by the auction purchaser, for the capital laid out by him in improvements.

In this reasoning, Mr. Trevor appears to forget that long leases are indispensable for the object Mr. Mackenzie has in view; and yet Mr. Trevor would not grant long leases. Even if adequate returns might be derived from leases of moderate duration, what tenant would willingly encounter the difficulty of recovering compensation from an auction purchaser? With the expense and uncertainty of litigation before him, would he willingly enter into engagements with the existing Zemindar? Or would a Zemindar grant such leases, knowing how seriously they would deteriorate the value of his Estate, in the event of a sale for arrears. With indefinite claims for compensation, men would be slow to purchase Estates when sold for arrears. As a set-off against the depreciation resulting for the claim for compensation, a Zemindar would demand a bonus, and that would, with the other objections, operate as a prohibition to the capitalist.

Mr. Trevor says, the ryots now in Jessore cultivate the Date Tree extensively. Granted, and those very ryots cannot be ousted by an auction purchaser. Mr. Mackenzie says there is a large field for the extension of Date cultivation, which, however, cannot be occupied by native ryots for want of capital. Europeans might command the capital, but the fear of eventually losing that capital stays their hand. The Legislature would, in my opinion, act wisely, if it removed all ground for fear.

E. M. GORDON.

29*th April*, 1850.

No. 5.

Minute by H. Ricketts, Esq., Member of the Sudder Board of Revenue: dated the 10*th May,* 1850.

The petitioner, Mr. Mackenzie, desires to lay out capital in Date Plantations in Jessore, but he and others are prevented from thus improving the resources of the country by the uncertainty of the tenure of land. A Date Plantation yields nothing for seven years, but lasts from thirty to fifty years. The first expenditure is considerable, and, like all other plantations, of course requires care and attention while the trees are young. Under such circumstances, a lease for a long term, good against all contingencies, is absolutely necessary; but as the law exists, a pottah could not be drawn that would prevent the purchaser at a sale for arrears from demanding rents regulated by the produce, or in other words, prevent him from taking all the profit of the planter's outlay.

The question appearing to us one of the greatest interest, and to concern not only Date cultivation, but Cocoanut, Betelnut, Coffee, Mulberry, and all agricultural enterprize, draining, manuring, embanking, &c., we requested the Officers named in the margin to assist us with their opinion, whether special protection to all such undertakings would be advantageous.

Mr. Sconce.
Mr. J. Alexander.
Mr. Mills.
Mr. Mytton.
Mr. Davidson.
Mr. J. Torrens.
Mr. A. Forbes.
Mr. C. B. Trevor.

It may save trouble, if I give a precis of the replies received.

Mr. Sconce is of opinion that the rule laid down in Section XXVI. Act I. of 1845, describes properly the kind of lease which should be protected in the event of a sale, *i. e.*, a farm granted in good faith at a fair rent and for a specified area. He thinks the duration of leases should be restricted; he would not create an interest that would be next thing to permanent; he thinks for Date Trees thirty-five years would be sufficient; he would limit the period to what would be sufficient to compensate an enterprizing lessee for his energy, his risks, his anxieties and his outlay of capital. But he would grant to any man the right of hereditary occupancy, who cleared and cultivated land which had hitherto remained profitless and uncleared. He would have the sanction of the Executive to a lease supersede, with those exceptions only which can be specially defined, the revision of its conditions by the Civil Court. It would be far better that what was a "fair rent" should be determin-

ed at the commencement of the lease, and not left for the decision of the Courts years after; he would have approval of a lease by a Collector secure it for any period within thirty-five years.

There is much more in this letter, but connected with details rather than with the principle of protection.

Mr. James Alexander thinks that legal sanction to the creation of such sub-tenures as may secure to the tenant-cultivator, his possession of them until he is repaid by the produce from them for his outlay, is of great moment.

Mr. Mills observes that, as a commercial speculation, the manufacture of Sugar from the Date Tree deserves the warmest encouragement—that looking to the nature of the cultivation and the risk and loss which are to be encountered, nothing short of permanent property in the land will impart that confidence, which is necessary to cause European enterprize and capital to be applied to it. Mr. Mills thinks that extension of the cultivation of Date Trees would so much benefit England and India, that the protection desired should not be withheld from the capitalists.

Mr. Mills would, as proposed by the Board, "declare all *bonâ fide* "leases, whether for Date plantation, Cocoanut plantation, Coffee plan- "tation, or Betelnut plantation, as well as all other leases productive "of agricultural and commercial advantages, to continue in force and "effect, notwithstanding a sale for arrears of Revenue, so long as the "land is duly appropriated to such purposes, and the stipulated rent is "paid; he would amend the 5th Clause, Section XXVI. Act I. of 1845, "to this effect, subjecting the lease to the approval of the Collector and "Commissioner as therein provided, and to the proviso contained in the "concluding paragraph, to wit, that the purchaser is at liberty, by suit "in Court, to set aside the said leases, if the same shall have not been "granted in good faith at fair rents."

In temporarily-settled Districts and Estates, where the Zemindars are forbidden to give leases or fix rents of any land tenure for a period exceeding the terms of their own engagements with Government, Mr. Mills observes, it might be declared that on revision of Settlement such leases shall be upheld, and the amount of assessment not be raised, unless it shall clearly appear that the land is no longer occupied for the purpose for which it was leased.

Mr. Mytton is of opinion that plantations are protected by Clause 4, Section XXVI. Act I. of 1845; if not, he would extend the law so as to protect enterprize.

Mr. Davidson thinks that further protection than that now afforded by Act I. of 1845 is unnecessary; that Clause 5, Section XXVI. secures *bond fide* leases on fair terms for twenty years; that Section XXVIII. gives the Government power to cause an Estate to be sold subject to the leases and engagements entered into by the Proprietor in possession or his predecessors, and that there can be no doubt that the Government in such a case as Mr. Mackenzie's would exercise the power. Mr. Davidson observes that if Date Cultivation is to be confined to sandy and other soils, which but for this cultivation would be barren and unproductive, there can be no objection on the score of the Revenue to protecting it.

Mr. J. Torrens thinks, that with the conditions of Section XXVIII. Act I. of 1845 duly provided, there could be no objection to allow Proprietors to grant leases for the purpose of agricultural improvement, which should not be affected by sales for the arrears of Revenue.

Mr. Forbes agrees with Mr. Davidson that the protection of Act I. of 1845 is sufficient. If Mr. Mackenzie is merely a farmer of rents, whether he takes the rents in kind or in money, and sub-lets the land to a number of ryots who plant it and extract the juice of the trees with their own capital, Mr Forbes is of opinion that he has no more claim to extraordinary indulgence than any other farmer; but if Mr. Mackenzie has taken the land into his own cultivation, has planted the trees, and weeds and manures and extracts the juice of the trees at his own cost and risk, then Mr. Forbes thinks he is protected as a koodkasht ryot.

Mr. Trevor represents that when Act XII. of 1841 was under discussion, the propriety of allowing as a general rule all "*bond fide*" leases granted by Zemindars to stand, notwithstanding a sale for arrears of Revenue, was canvassed and disallowed; he is of opinion that plantations are not protected by Clause 4, Section XXVI. but that they may be protected under Section XXVIII.; there is therefore no practical hardship. Though of course tenures protected by indulgence are less saleable than those protected as of right.

Mr. Trevor thinks that to accede to Mr. Mackenzie's proposal would be to interfere with the perpetual Settlement, and all its subsequent arrangements; that under the Settlement all leases created by the outgoing Zemindars, unprotected by the Regulations of 1793, fall, and the Estate comes into the possession of the new purchasers in exactly the same condition as to incumbrances as it was at the period of the Settlement.

This being the case, Mr. Trevor is of opinion that the proper way of meeting the request of capitalists that they should have some security for the return of their outlay is, not by encumbering properties with leases granted by disseized Zemindars for longer or shorter periods, tenures now unknown to the law, but by giving all tenants who may be ousted under the operation of the Sale Laws, and who have not received a remunerating return from the capital expended by them, a right of compensation against the Zemindars who will be benefitted by that outlay, in the shape of increased rent demandable from their new tenants. The creation of such a tenant-right will be a check upon indiscriminate ejectment, will have a tendency to effect a compromise between the extreme demands of both landlords and tenants, and will be not inconsonant with the spirit of the right of property established at the Decennial Settlement.

Mr. Trevor moreover thinks that the importance of the object to be gained by the introduction of capital is not sufficient to warrant a departure from the principles established by the laws now in force, more especially as capital has flowed, and continues to flow, into the country under the operation of the present system; and if the demand for Sugar and other commodities increase, there can be little doubt that the supply of them will increase also, without any alteration in the law of landlord and tenant, further than that whereby the right of compensation is granted to the last under certain circumstances.

It behoves me to write modestly where there is so much difference of opinion among the able men whose letters I have above endeavoured to analyse, especially when my colleague adopts some of their sentiments opposed to mine; but having a decided opinion on the question, I must not hesitate to give it. I do not think plantations are protected by the existing Law so effectually as to give any confidence to farmers. I would protect them completely under all contingencies. I would have no reservations respecting "*bonâ fide* leases" and "fair rents." The auction purchaser should buy the rights which the defaulting Zemindar had reserved for himself, that is, had not already sold, and nothing more. I would have all such leases registered systematically, so that the encumbrances of an Estate might be ascertained in a few minutes. The register-book should be accessible to all, without a fee, or on payment of a very moderate fee, just sufficient to prevent parties examining it from mere curiosity—purchasers would know what there was to buy, and bid accordingly.

I can see no difficulty, no injustice, no risk, in such a system, but should successive possessors so encumber the resources as to bring about sale and purchase by Government, then a revision of the tenures must be resorted to, otherwise the land Revenue might suffer considerable diminution; but even in that case, I think there would be no great difficulty in guaranteeing all speculators against undue demands.

We might have two classes of engagements, one protecting the capitalist against other auction purchasers only, the other protecting him against the Government as auction purchaser. The first class of engagements the Collector would have merely to register in the book of encumbrances. No precautions on his part would be necessary, save to see that the nature and extent of the interest conveyed, was *clearly described.* I cannot imagine any cause whatever for interference. So long as the assessed jumma is paid, and provision be made to prevent any diminution of that jumma in the event of the Estate lapsing to Government, the only interest the Government can have is that all parties should have every facility of making arrangements suited to their own wants and wishes. If such arrangements conduce to the outlay of capital, and the improvement of the property, so much the better. It cannot be necessary for the Government to consider what may be advantageous and convenient to some future auction purchaser.

The second class of engagements should be subject to the revision of the Commissioner and the Board. It would behove these authorities to sanction freely all engagements not calculated to decrease existing resources. Few cases of difficulty would present themselves, doubts remaining, sanction might be withheld.

For instance A. zemindar, and B. capitalist, present themselves before the Collector with a deed, by which A. makes over to B. 300 beegahs of Jheel in mouza Allipore, measured and mapped. It now pays A. 1 anna per beegah; B. agrees to pay A. 2 annas on condition of a lease for sixty years, B. engaging to drain the whole. B. desires a guarantee in case of sale of the Zemindaree, and purchase by Government. The Collector reports he has ascertained that this 300 beegahs has always been waste; that its cultivation without being drained at a great expense is impracticable. The guarantee not to demand more than 2 annas would be granted, and why not?

A. and B. appear and produce a deed, by which A. leases to B. for thirty years a village in the hands of ryots now paying Rupees 300 per annum, B. is to pay Rupees 2,000 salamee, and Rupees 150 rent: guarantee on

the part of Government must be refused, but the Government might guarantee that B.'s possession should not be disturbed if he agreed, on the Estate being purchased by Government, to pay for the remaining period of the thirty years, Rupees 240, *i. e.*, the present rental, less 20 per cent!

A. and B. appear and produce a deed, by which A. makes over to B. 300 beegahs of land for a Betelnut Plantation; the land now pays 1 Rupee per beegah; B. is to pay 2 Rupees for eighty years; guarantee is required against increase on sale for arrears. It should be refused, and guarantee for thirty years allowed. But cases of this sort would be rare; applications of the first class for guarantee against purchasers would in some parts be very numerous. The establishment necessary might be paid by fees, the amount of fees to be regulated so as to cover the expense, and no more.

Mr. Davidson would allow a lease to be set aside when the land was no longer occupied for the purpose for which it was leased. Certainly, if the leaseholder departed from his engagement, so that his lease would have been liable to annulment at the suit of the *Zemindar who gave it*, it should be liable to annulment at the suit of the auction purchaser, his representative, but not otherwise.

Again, Mr. Davidson thinks it would be sufficient encouragement to capitalists to know that their *tenure* might be protected by the Government under Section XXVIII. Capitalists are always very unwilling to trust to the discretion of any one, and especially unwilling to trust to the discretion of any Government.

Mr. Trevor, too, represents that as the local Government has the power to direct that a sale be made subject to all leases, and assuredly would exercise the power should it be proved satisfactorily to the Collector that the leases were granted in good faith and at fair rents. But who would lay out capital while it was left to a Collector to entertain, at any time when a sale might take place, the question "what was a fair rent." How is such a question to be decided? When the speculator took the land it yielded nothing; in consequence of his outlay it yielded, when the sale took place, produce worth Rupees 25, per beegah. On what data could a fair rent be fixed?

My colleague writes—"It seems to me indispensable that the leases "should be at fair rents, and that the auction purchaser should have "the power of enhancing them to an adequate amount through the "Courts, on proof of inadequacy. Fair or adequate rents should be held

" to be the rates paid at the time the leases were granted for similar land " in the District within the Court's jurisdiction." But if when the Estate was put up, bidders were informed that Mr. A. held on a lease secured for fifty years, what possible claim could the purchaser have to enhance his rent? Why should the auction purchaser have a licence to possess himself of the return for Mr. A.'s capital? How can the country be benefitted by ruling that because A. was a spendthrift, and fell into arrear, B. shall reap what C. sowed?

I have heard it objected that if leases for improving are to be protected, no one will ever be able to obtain an unencumbered property; that while opening one door for the outlay of capital we shall be shutting another. Such is not the case. Purchasers will not have opportunity to drain that already drained, nor to plant that already planted, but the field not already occupied will be open to them.

Instead of protection to improvers being any interference with the right of property, as represented by Mr. Trevor, it appears to me that withdrawal of interference is proposed. At present Zemindars are limited in their power to grant leases; I propose to withdraw the limitation, to allow them to grant leases for any number of years that may appear to them suitable, and upon any terms. It is not proposed to compel them to grant leases, but to give liberty to do so if convenient to them. This cannot be styled interference with property. It is true that purchasers will not " as heretofore, acquire Estates in exactly the " same condition as to encumbrances as they were at the period of the " Perpetual Settlement." The interest exposed to sale will be a limited interest, but there will be no interference with any property acquired under the sale.

Mr. Trevor remarks—" By the adoption of Mr. Mackenzie's long " leases, the advantages of increase of price, in that of Sugar for instance, " would for a long series of years go altogether into the pockets of the " leaseholders, and the present Zemindar (the auction purchaser), " himself not a party to the lease, would be altogether deprived of a " portion of those profits to which he is justly entitled as a return for " the use of his land."

Why should not the advantage of increase of price go to the leaseholder? The speculation, the risk, were his, not the Zemindar's; he would have suffered the loss had prices fallen. How could an auction purchaser be " justly entitled" to rents increased in proportion to the increased value of the leaseholder's produce, when all exposed to

sale, and all bought by the auction purchaser, was a right to collect a specified rent from such leaseholder?

Nobody could be found to defend a law ruling that on the demise of a landlord all leases granted by him should be cancelled, and the Estate come to the heir in exactly the same condition, as to encumbrances, as it was when the late proprietor took possession. Under such a law, who would build or in any way improve? Indeed leaseholding would very soon be unknown; the only transactions would be transfer of the fee simple.

If disadvantageous, and adverse to all confidence and improvement, when dependent on a landlord's life, such an annihilation of all derivative interests must be disadvantageous when dependent on a landlord's honesty and prudence. Life is uncertain, the prudence of landlords not less so.

Unless it can be shown that annihilation of leases, when a landlord happens to be drowned, or to be confined in the Queen's Bench, would conduce to the welfare of tenants, and the improvement of the country, I conceive that the existing system of annihilation of leases on sale for arrears, can be defended only on the ground of its being necessary to the maintenance of the public Revenue.

But it is not necessary to the protection of the public Revenue. It matters nothing to the Government, whether the incumbent derives Rupees 5,000 per annum or 500 from the Estate, so long as the Revenue is paid, and the arrangements of the incumbent are not of a nature to cause deterioration of the Estate. All leases, such as Mr. Mackenzie desires to have, must be advantageous to the country in every respect; he desires to make waste land yield the most valuable produce. Leases granted by needy proprietors, receiving a price for the same, can have no prejudicial effect on the public Revenue, for should they not have been protected against sale and purchase by Government, they will be set aside, and that without any injury to the farmer, for if protection was withheld, of course the price he paid was regulated accordingly.

It may be objected, that under such a system a poor proprietor might be induced to establish in his property a vast number of small shikmee proprietors, taking a fee from each, and by so doing to cripple the resources of the Estate, and in the event of a sale to paralyze the purchaser, and prevent any application of his capital. To this I would answer, that parties having capital which they desire to invest would not purchase Estates in such condition. If when every information may

be had from the registry book, they neglect to ascertain what the encumbrances of an Estate are, they have but themselves to blame; and seeing that it is still actively disputed whether a system of small proprietors or of large proprietors most contributes to the prosperity of a country, and that, should the effect be prejudicial, so as to greatly reduce the proceeds, sale and purchase by Government will rectify it; I see no reason whatever for apprehension on this score.

With this subject, the difficulty attending purchase of the Zemindaree tenure should be considered. Doubtless speculators, instead of becoming sub-tenants on any terms, would prefer to purchase the fee simple, and become Zemindars holding direct from the Government; but the difficulties and embarrassments which attend such a course of proceeding are nearly insuperable. It cannot be necessary that I should describe the objections to becoming a sharer in an ijmalee Estate, and having to take part in all the disagreements and frauds of the other sharers; no European, with any care for his honorable name, his peace of mind, or for his pocket, would think of such a scheme, except under very unusual circumstances. The only alternative is to purchase a specified Mouzah or Mouzahs, and this is attainable only by means of butwara, which, where the whole Zemindaree is considerable, and the portion to be purchased a small portion only, is tantamount to saying it is not attainable at all; for in order to procure separation and independent registry, the process described in Regulation I. of 1793 must be resorted to, the expense of which, in the case of a small purchase, is alone a bar to the acquirement of the Zemindaree interest. It may be said that in each District there are many small Zemindarees, but it must be recollected that in order to the success of plantations, such as European capitalists would desire to introduce, considerable tracts of land of the one description most suitable to the particular plant are required; for the sake of three acres fit for Coffee, it would not answer the purpose of a Coffee Planter to buy a Zemindaree containing 300, and tracts contiguous to each other are necessary, the expense of management being enormously increased if the lands are scattered. In short, there are so many obstacles to planters becoming Zemindars, that it is especially necessary to protect farmers.

I cannot dismiss this subject without an expression of my opinion of the great advantages which would attend the registry generally of tenures protected under Section XXVI. Act I. of 1845. The Law rules that the purchaser of an Estate sold under that Act shall be entitled

to enhance the rents of and reject all tenants not protected under the succeeding Clauses of that Section; but in the first place the titles as defined are open to question, and *secondly*, there is no record of protected tenures.

The consequence is, that on a sale taking place, affrays and litigation cannot but ensue. There must always in every case be years of enmity between the new landlord and his tenantry. There being no record of the protected, he assumes that none are protected, while the tenants set up groundless claims to protection, oftentimes supported by the late Zemindar. To me it is quite wonderful that any one should purchase property. Indeed the Natives themselves say no one should think of buying who is not prepared to lay out cent. per cent. on the purchase-money in litigation. I can imagine no condition more pitiable than that of the inhabitants of a Zemindaree transferred by a sale for arrears!

Though the purchaser may be a man of good character, his agent may be a tyrant. All the tenures of all classes are open to revision; each inhabitant can see before him only the feeing of peadas and ameens, "salamee" to the new owner, weary journeying to the Sudder Station, and at last re-adjustment of his rent—"re-adjustment of his rent!" We can talk of it, and write of it with indifference, but to the tenants of an Estate a sale is as the spring of a wild beast into the fold, the bursting of a shell in the square. It is the disturbance of all they had supposed stable.

The consequence must be a re-casting of their lot in life, with the odds greatly against them.

Doubtless a registry of protected tenures would be a great undertaking, but when we think of the enormous number of tenants in Bengal, and reflect how few there are among them whose weal does not depend on the prudence, or honesty, or caprice of another, the substitution of confidence for such uncertainty appears cheap at any amount of labor.

It does not follow that registry of claims, protection in the event of a sale, should occasion any great litigation, for, and this must be borne in mind, it is not protection against the present owner, but protection against the auction purchaser that will be sought, should the present proprietor admit a claim, or be induced, by tender of suitable recompense, to recognize such a claim. Record of his admission will be sufficient protection; should he deny the right, the denial will be recorded. The registry-book will tell all parties intending to purchase what there is to buy. It will be objected, that such a scheme would inevitably cause

many Estates to come into the possession of Government. Each succeeding owner would increase the incumbrances, till at last, all being alienated but the Sudder jumma, there would be nothing in fact to sell, and therefore nothing to buy, and escheat to Government by the form of a sale would be inevitable—so be it. There would follow re-settlement, and a re-adjustment of the public demand on equitable principles. Those who, at the time of their taking leases under any of the former proprietors, procured a certificate of protection in case of sale and purchase by Government, would not be disturbed; the other tenants, never having been secured against such contingency, and having always been aware that their title was questionable, and having expended their capital, guided by that knowledge, could have no fair grounds of objection to a re-adjustment of their liabilities. This re-adjustment completed, the Zemindaree tenure should be sold, on such terms as might be considered advantageous to the community, and the Government.

Supposing that in each year, on an average, Estates paying a lakh of rupees were to be in this way purchased by the Government, where is the objection, compared with the objection of the whole landed property of the country being in such a condition that no European capitalist will accept land as security for money? Where is the objection compared with the objection of not allowing a good title to any tenant in Bengal, except those particularized in Section XXVI. Act I. of 1845? I have said "except," but I doubt whether there has been a single instance of an auction purchaser recognizing a title under that Section, without a law-suit.

Appended is a note of the modification of Clause XXVI. Act I. of 1845, that I would introduce. It is my belief that the change would give a great impulse to industry and enterprize; would put an end to much fraudulent dealing; and, far from risking the stability of the Revenue, would greatly increase the resources of the country.

First.—In modification of Clause 5, Section XXVI. Act I. of 1845, it is hereby enacted that all leases or farms granted by a former proprietor for any period not exceeding ninety-nine years, under written leases, registered or presented for registry within a month from their date, shall continue in force notwithstanding a sale for arrears of Revenue, and the auction purchaser shall have no authority to set aside any such lease or farm, or to make any demand from such registered farmer or leaseholder, that could not, under the provisions of the lease, have been demanded by such former proprietor, had he continued in possession.

Second.—And it is hereby enacted that in the event of a sale for arrears and purchase by the Government, the Government shall acquire the Estate free from all encumbrances which may have been imposed on it after the time of Settlement; provided always, that should landlord and tenant be desirous of procuring protection for an under-tenure against the Government, in case of such purchase being made, they shall represent their wishes to the Collector, with full particulars of the tenure existing or to be created, and it shall be competent to the Sudder Board of Revenue, on report from the Collector, through the Commissioner of Revenue, to grant protection for the full term required, or for such reduced period as, with reference to the circumstances of each case, may be considered suitable, and not inconsistent with the stability of the land Revenue.

And it is hereby enacted that a register of protected tenures shall be kept by the Collector, in such form as may be prescribed by the Sudder Board of Revenue, and that it shall be competent to the Collector to demand a fee on registry, equal to the value of the stamp on which the lease may be engrossed, or if there be no deed, then one per cent. on the yearly rental; and that such fee shall be appropriated as the Government may direct; and it is hereby provided that such Register shall be open to inspection at any time, by any party, on payment of a fee of two rupees. Such fee to be appropriated under the authority aforesaid.

H. RICKETTS.

The 10*th May*, 1850.

No. 6.

Minute by E. M. Gordon, Esq., dated the 14th May, 1850.

1. As I cannot be a party to the plan of my colleague, it is necessary that our Minutes should be submitted separately to Government. I am an enemy to the adoption of any sweeping change, the consequences of which are not easily foreseen, and the necessity for which is not clearly established.

2. It would be difficult to pronounce, before hand, on what would be the effects of Mr. Ricketts' proposed change. Time might show that evils resulted from it, though not seen by the projector at the time of the proposed introduction of the plan. One or two objections to it occur to me.

3. When an Estate became the property of Government by purchase, Mr. Ricketts would interfere with leases, to the extent of securing the Government Revenue. But how would he realize balances accruing before the sale, and uncovered by the price? Under the state of things advocated by Mr. Ricketts, it is impossible to doubt, that every Zemindar who, from whatever circumstances, found it necessary to let his Estate go to the hammer, would make the most of it by alienating its lands on favorable terms, and by defaulting to as great an extent as he could. The effect of this would be, to reduce the marketable value of the Estate. The resources of that Estate might still be sufficient to pay the Government demand, but not the Government demand and the price sufficient to cover the outstanding arrear. In such a case (and such cases would be numerous) Government, becoming the purchaser, must lose that arrear, whether it bought the Estate for a rupee, or bid up to the amount of the arrear. In the former case, it would have only the bankrupt Zemindar to look to. In the latter, the resources of the Estate, though equal to the sudder jumma, would not cover that sudder jumma and the price paid for the property.

4. Take another case, as illustrating the fraud that would spring from my colleague's plan. At present a man advances a large sum of money to the proprietor of an Estate, on mortgage. The lender hopes that, either by occasionally assisting his debtor in the payment of his Revenue, or by purchasing the Estate himself, in the event of a sale, or by the surplus proceeds of sale, he will recover his loan. But how

could he be safe, if, prior to the sale, the Zemindar could alienate without let or hindrance? It seems to me, that such a law as that for which Mr. Ricketts contends, would extinguish at once all borrowing or lending on landed security. For what reason would Mr. Ricketts produce such dire results? For none, that I can see, that is at all necessary for the accomplishment of the end he has in view.

5. The Petitioner himself, I believe, would be perfectly satisfied, if *bond fide* leases, at fair rents, were maintained, in the event of a sale for arrears. According to the meaning I intended to convey by the words "fair rents," no such consequences as those Mr. Ricketts describes would take place, and no capitalist would, on the conditions supposed, be afraid to embark capital in extending useful cultivation. To guard against misconception, however, I have added a few words, making my meaning more clear.

6. On the subject of Mr. Ricketts' proposition regarding registration, though it would certainly be desirable that all tenures, forming the exceptions to Section XXVI. Act I of 1845, should be registered, I much question the practicability of enforcing such a scheme. To cause every ryot to come from a distance, to register at the Sudder station, would be to impose a severe hardship upon an immense number of men, little removed from the condition of paupers. To set aside their claims because of non-registry, would, I think, be unjust. Towards the practicability of the plan of registry, an Office in almost every village would be necessary. Besides, how are Zemindars to be compelled to grant pottahs, when they won't grant them, and why should a ryot be deprived of his right, though that right is not registered, when the fault lies, not with himself, but with the Zemindar who will not give him a pottah?

E. M. GORDON.

14*th May*, 1850.

No. 7.

Minute by H. Ricketts, Esq., dated the 17th May, 1850.

There would occasionally be loss, as there is now, but with quarterly sales, systematically enforced as at present, heavy arrears never can accumulate. Any loss would be more than covered by the re-assessment of the Mehal. In the end there would be great gain. The Estates of the careless and improvident would be subject to re-assessment by the Government, instead of re-assessment by an auction purchaser. The bankrupt proprietor would be no worse off, the Government and all the leaseholders of every class would be better off.

Para. 3 of Mr. Gordon's Minute.

In re-assessment by Government, of course due advertence would be had to farmers' improvements. At present, the auction purchaser reaps the benefit of their outlay as a matter of course. The principle of our land tax is to assess natural capabilities. In re-assessment, that principle would be the foundation of the proceeding, to be departed from only under circumstances justifying assessment of improvement, not as a matter of course.

The mortgagee has but to demand from the mortgager an engagement not to underlet, *i. e.* not to alienate to another any portion of the interest already alienated to himself.

Para. 4, of Mr. Gordon's Minute.

I do not desire to cause every ryot to come to register at the Sudder station, nor have I proposed to set aside their claims because of non-registry. Neither have I proposed to compel Zemindars to grant pottahs. I propose that those tenants should register, who choose to register, and those Zemindars should grant pottahs, who choose to grant pottahs.

Para. 6, of Mr. Gordon's Minute.

Suppose all the ryots on an Estate to register claims to protection, and the Zemindar in possession to admit none. Parties desirous of purchasing would act accordingly; those not prepared for litigation, would not bid; those who did bid would have no cause for complaint. If a man buys a coat with "rotten" written on it, he must make up his mind to pay for darning.

My colleague says, a Registry Office in every village would be necessary. In some parts of the country many would register; in others, the cultivators are all, or nearly all, merely tenants at will.

In order to estimate the value of such a registry, it is necessary only to contemplate what the difference at this time would be, if the registry had been completed! If all the protected tenants, and all leaseholders in Bengal could lie down to-night, conscious that henceforward an auction purchaser could not injure them, that their capital, intelligence and industry were their own; that "enhancement of rent" was no longer to be feared; if capitalists could go to the Collector's Office, and there for a fee of two Rupees learn to what extent each Estate was encumbered, to what extent protection was claimed, and what remained offering a field for outlay, how different would be the state of things from that now existing! No one knows whether he is protected or not; all feel that whatever their title, it can only be maintained by protracted litigation. Buyers bid with feelings similar to those of a person engaged in gambling. I am not exaggerating. All those connected with the Midnapore estate would bear witness to the truth of what I am writing. The auction purchaser complains that he is ruined, because he cannot realize the rents, which he is entitled to collect. The tenants complain that he desires to enhance the rents of all those protected. Cases before the Magistrate, before the Judge, before the Commissioner and the Board, authorities differing as to who is protected and who is not, and as to the shape in which trial should take place, and before what tribunals! And the state of this large property must be the state of every large property sold for arrears.

Possibly, as prognosticated by my colleague, the adoption of the system I propose would lead to dire results, but it appears to me, no state of things could be more dire, than that which has existed for some time in Midnapore; it behoves us to endeavour immediately to modify a system, under which such a state of things can prevail.

Though my opinions are those I have expressed, I by no means say, that had I the power I would immediately act on them. Further inquiry is needed, and from many classes—Zemindars, Farmers, Speculators, Merchants and others; and I think it might be very useful, if a committee was appointed to take evidence and report, communicating from time to time with the Government, and regulating the field of their inquiry in conformity with the orders they might receive.

The minutes must be sent up. There is no chance of our agreeing to a report.

H. RICKETTS,

17*th May*, 1850.

No. 8.

Minute by E. M. Gordon, Esq., dated the 18th May, 1850.

Submit to Government.

I would merely say, with reference to the lapsing of putnee tenures, in the event of a sale, that I should not be opposed to the giving of retrospective effect to the principle I advocate, *viz.* permanence notwithstanding of sales, to *bonâ fide* leases on fair terms.

E. M. GORDON.

No. 9.

FROM A. J. M. MILLS, ESQ.,

TO THE SECRETARY,
To the Sudder Board of Revenue,

Dated the 13th February, 1850.

SIR,

I have the honor to acknowledge the receipt of your letter, No. 21, of the 1st instant, with its enclosure, requesting my opinion on the subject of Mr. Mackenzie's application to Government.

2. Having held office in Jessore, I can add my testimony to that of Mr. Mackenzie in regard to the great importance of Date Cultivation Even in my time, in 1833 and 1834, it was annually extending, and I can readily believe, that since the manufacture of Sugar from cane has ceased to remunerate the planter, it has become the object of increased attention.

3. As a commercial speculation, the manufacture of Sugar from the Date tree deserves the warmest encouragement, and it is the duty of Government to remove the insuperable objection which *now* stands in the way of expending capital in promoting it. This is stated to be the uncertainty of the tenure under which land can be rented for the pur-

pose. It is true, that Europeans are permitted to purchase land to any extent, but Date trees flourish in sandy and unproductive ground, which is seldom found in compact sites; they are not productive till they have attained seven years' growth; and it would not be worth the planter's while, nor would it perhaps effect his object, to purchase Zemindarees for the sole purpose of forming Date plantations. What he requires is secure possession of lands suited to the cultivation of the Date tree, under a lease not voidable by a sale for arrears of Revenue; and looking at the nature of the cultivation and the risk and loss which are to be encountered, nothing short of permanent property in the land will impart that confidence which is necessary to cause European enterprize and capital to be applied to it; and so greatly will the cultivation of Date trees benefit both England and this country, that I am of opinion the protection desired should not be withheld from the capitalists.

4. I would, therefore, as proposed by the Board, declare all *bond fide* leases, whether for Date plantation, Cocoanut plantation, Coffee plantation, or Betelnut plantation, as well as all other leases, productive of agricultural and commercial advantages, to continue in force and effect, notwithstanding a sale for arrears of Revenue, so long as the land is duly appropriated to such purposes, and the stipulated rent is paid. I would amend the 5th Clause, Section XXVI. Act I. of 1845, to this effect, subjecting the lease to the approval of the Collector and Commissioner as therein provided, and to the proviso contained in the concluding paragraph, to wit, "that the Purchaser is at liberty by suit "in Court to set aside the said leases, if the same shall have not been "granted in good faith, at fair rents."

5. In temporarily-settled Districts and Estates, where the Zemindars are forbidden to give leases or fix rents of any land tenure for a period exceeding the terms of their own engagement with Government, it might be declared that on revision of Settlement such leases shall be upheld, and the amount of assessment shall not be raised unless it shall clearly appear that the land is no longer occupied for the purpose for which it was leased.

I have the honor to be, &c.,

A. J. M. MILLS, *Civil Service.*

Calcutta, the 13th February, 1850.

No. 10.

FROM A. FORBES, Esq.,

TO THE SECRETARY TO THE SUDDER BOARD OF REVENUE
FORT WILLIAM.

Dated Pooree, the 13th February, 1850.

SIR,

I have the honor to acknowledge the receipt of your letter, No. 21, dated 1st February, 1850, which reached me late on the 10th instant.

2. I cannot gather from Mr. Mackenzie's application what the exact nature of his pottah may be; and it occurs to me that it entirely depends on the nature of his pottah, whether he is protected under existing laws or not in the first place; and in the second, if he is not, whether it is expedient that he should be.

3. Section XXVI. of Act I. of 1845, gives the purchaser at a sale for arrears of Revenue the power of enhancing at discretion (anything in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the Estate, and of ejecting all tenants *thereof.*

4. I do not take the meaning of the word under-tenure to mean the land cultivated by a *ryot,* or in English, the actual cultivator of the soil; but the tenement of a person between the ryot, or actual cultivator, and the actual proprietor who pays the Revenue to Government.

5. Neither again do I think that the fifth exception of Section XXVI. can be held to apply to the actual cultivator of the soil. The word farmer, as used in Revenue matters, and in the Regulations, invariably refers to some person between the actual proprietor and the cultivator: and in no instance does it apply, or can it be held to apply, to the actual cultivator. The cultivator, in fact, is as distinct from the farmer, as the payer of the hearth-money in England used to be from the farmer of the hearth tax.

6. If Mr. Mackenzie is a farmer of rents, whether he takes the rents in kind or money, if he does not cultivate and plant, and otherwise tend and take care of the Date plantation, and extract the juice of the trees through his own labourers, and with his own capital, but sub-lets the

land to a number of ryots, who plant it and extract the juice of the trees with their own capital, and deliver it to him under contract; then I conceive he can only claim protection under the fifth exception of Section XXVI., and I cannot see that he has any claim to extraordinary indulgence, more than any other farmer.

7. If, on the other hand, Mr. Mackenzie has taken the land into his own cultivation, has planted the trees, and continues to weed and manure the land, and to extract the juice of the trees at his own cost and risk, without any person of any description intermediate between him and the soil, then I conceive his jot or chas, or in English the land in his own cultivation, is secured to him by the third exception of Section XXVI. as a koodkasht ryot, whose rent is assessable according to fixed rules under the Regulations in force.

8. It is impossible, I conceive, to put any other construction on the Section. The five exceptions cannot, I conceive, be so construed as to confer on the purchaser any greater power than is actually given in the body of the Section; and if the body of the Section be taken by itself, it confers power to enhance the rents at discretion, and eject the tenants of under-tenures alone.

9. Many words of great importance in the Section are certainly of doubtful meaning, but no Court could, I imagine, so misinterpret them as to hold that the power of enhancement at discretion and ejectment extends to every ryot on the Estate, who did not receive a pottah at the Perpetual Settlement, and thus confiscate the rights and claims and titles of all those who may have sunk their capital (however trifling in amount in some cases that may appear), under the protection held out to them by Regulation VIII. of 1793, Sections LIV. to LIX. and Sections VI. and VII. of Regulation IV. of 1794. Nothing but the rescission of those laws, accompanied by a most clear and positive enactment, can relieve the purchaser of the obligation he is under, of renewing the leases of the actual cultivator; or can deprive the actual cultivator of the security those laws guarantee to him. Neither is there anything in Section XXVI. that can be held to deprive the Zemindar of the necessary authority to take due measures for the cultivation of the soil, as heretofore, by withholding from the cultivator the security that has from time immemorial been extended to him.

10. If then Mr. Mackenzie holds a pottah as a koodkasht ryot, he will be entitled, under Sections VI. and VII. of Regulation IV. of 1794, to a renewal of the pottah in the event of its cancellation, by the

sale for arrears of Revenue of the Estate, at the Pergunnah rates for similar land at the time the pottah was granted; or, should there be no Pergunnah rates, or should the rule of Pergunnah rates not apply to the land in his cultivation, then the Civil Court will decide the terms of the renewal of the pottah according to justice, equity and good conscience, under Section XXI. of Regulation III. of 1793.

11. I can hardly conceive any new law necessary, because the protection the law already affords appears to be so very complete. If, however, capitalists are really and generally deterred from sinking money in the actual cultivation of the soil from the doubtfulness of the meaning of certain words in Section XXVI. of Act I. of 1845, a declaratory Act should be passed, more distinctly to define the real meaning and purport of that Section, and to set their doubts and fears at rest.

12. The declaratory Act might state that the words koodkasht and kudeemee are not intended to have a restrictive meaning, but that the exception is intended to include all ryots and actual cultivators of the soil, who, under Sections LIV. to LIX. of Regulation VIII. of 1793, and Sections VI. and VII. of Regulation IV. of 1794, are entitled to have their pottahs renewed. Should, however, a declaratory Act be passed, I think the expediency of rescinding or modifying the fifth exception is worth consideration. Smuggling a petition into the Collector's office ought not to afford validity to a lease.

13. I consider it unnecessary to state my reasons in detail for not granting further protection to middle-men (persons between the cultivator and the Zemindar), on the pretext of their being capitalists, and making advances to the actual cultivator. It would obviously lead to frauds on the purchasers, and foster and perpetuate a most oppressive system: as the middle-man would practice every art to keep the cultivator in debt, that he may continue to receive the produce of the particular crops that the cultivator is compelled to grow.

I have the honor to be, &c.,

A. FORBES.

Pooree, the 13*th February,* 1850.

No. 11.

FROM A. SCONCE, ESQUIRE,
Chittagong,

To G. PLOWDEN, ESQUIRE,
Secretary to the Sudder Board of Revenue,
FORT WILLIAM.

Dated the 19th February, 1850.

SIR,

I have the honor to acknowledge the receipt of your letter, No. 21, dated 1st instant, with its enclosure.

2. Upon the whole it seems to me that the rule laid down in the 5th Clause, Section XXVI. Act I. of 1845, describes properly the kind of lease which should be protected against the claims of a new Zemindar, in the event of the Estate within which it is situated being sold for arrears of Revenue, that is a farm granted in good faith, at a fair rent, and for a specified area. I speak now merely of the lease itself, not of the period for which it is granted, nor of the method by which its authenticity should be ascertained. The Legislature, I think, cannot be recommended to pass a law for the benefit of Date-tree cultivation only; while, as stated in the 2nd para. of your letter, the general improvement of agriculture should be an object of paramount solicitude in the estimation of the Government.

3. The bane of the landed interest in India, that is, of all those who are primarily interested in the land, the landholders on the one part and the actual cultivators on the other, is the creation of sub-tenures for the benefit of those who seek to lease rents, not lands; who speculate upon the opportunity they may be enabled to command of realizing extortionate rents; and who, being neither landlords nor cultivators, are permitted to absorb such an amount of the profits of the land as is calculated to paralyze the efficient operations of those with whose prosperity the prosperity of the entire country is most nearly identified. We require no law to facilitate farms of rents; but, on the other hand, as it must always happen that ryots of land already in cultivation will be found located within the areas which intending farmers, whose object is either to clear waste land or to cultivate more profitable products, may wish to lease, it is perfectly just to recognize, and it is perfectly easy

to distinguish, such cases from others in which a permanent intermediate interest is sought to be alienated.

4. I think, therefore, that we should not define by a law what kind of leases should *not* be granted; I would entertain all applications for farms granted in good faith, at a fair rent, and for specified areas; but as the power of a veto would be reserved to the executive authorities, to whom notice of the proposed farms is given, they should have ample opportunity of declaring the principles by which their assent would be governed.

5. It appears to me, that it is desirable to restrict the duration of leases. I would not uphold a lease for any period of time that the parties might choose to covenant. I would not create an interest which would be next thing to permanent. Take the strong case put by Mr. Mackenzie. Date-tree cultivation yields nothing for seven years: but after thirty years the plantation begins to wear out; I think in such a case it is enough to secure to the Date-tree farmer the produce of his first plantation, and I would couple the renewal of his trees, with a renewal of his lease. Instead of a term of twenty years, as the law now stands, I would extend it to thirty-five years. We have not now to consider how we should best distribute the proprietary interest in Estates; but retaining the right of property, and the profitable interest of property as they are, we would wish to transfer to an enterprising lessee the influential control of certain lands for a period which would be sufficient to compensate him for his energy, his risks, even his immeasurable anxieties and his outlay of capital.

6. Tenant-right is a different matter. We too may have tenant-right. The right of a koodkasht ryot is a tenant-right. The right of a junglebooree occupant is a tenant-right. Our laws speak of koodkasht ryots as if they held under a succession which, like Jacob's ladder, reached up to the clouds. Whereas in truth, now, as at any past time, a koodkasht right is susceptible of being created. I see no objection to granting to any man the right of hereditary occupancy, wherever he may covenant to clear and cultivate land which has hitherto remained profitless and uncleared. It signifies little by what name we designate him, provided we define his tenure as to its area, duration and assessment; for even as regards assessment, I think a maximum rate may safely be guaranteed to a party who is the first to educe produce and profit from the soil. And in the event of the public sale of the Estate within which a new tenure of this kind had been constituted, it would be sufficient to give the purchaser the privilege of re-opening the

Settlement, provided the proportion stipulated to be cleared within a fixed but liberal period, had not been reclaimed. And again I would rather give two small tenures to one man than one large tenure. This would be more likely to limit a man's ambition to his means.

7. The foregoing remarks refer to the nature of a farm, and its duration. It is also important to determine by what means the ostensible terms shall be open to be reviewed, and if need be, disallowed. Taking Mr. Mackenzie's application as a basis to remodel our law upon, and as a sample of the capabilities of the Mofussil, and of the openings for enterprize and capital, we should in the first instance take care to guarantee a secure tenure. My idea is, that the sanction of the Executive Government to the constitution of a lease should supersede, with those exceptions only which can be specially defined, the revision of its conditions by the Civil Courts. Take, for instance, the term used in the present law, "fair rents." If it were a question whether the rent payable by a farmer were fair or unfair, I would have this determined at the commencement of the lease, not after it had run ten or fifteen years. It might be declared that all leases which it is intended should survive a sale, shall be based upon a specific measurement, upon a Schedule of assets, and upon a return of five years' collections. These papers would remain a public record. And it might be provided that any suppression to the amount of (say) 10 per cent. should, if taken into court within (say) ten years of the date of the lease, entitle a purchaser to have it annulled. But I can hardly conceive a Civil Court assuming judiciously the exercise of the jurisdiction with which Clause 5, Section XXVI. of the present Sale Law invests it, and determining consistently what was or was not a fair rent. If it be a mere choice of trouble, certainly it would be far better, if the Board, or Commissioner, or Collector saw good reason to distrust the Returns submitted to them, to require a detailed measurement and local investigation of the assets of the proposed lease, *before it was agreed to*; rather than to postpone these inquiries to a period when it might be impossible to satisfactorily determine what was the position of the farm, ten or twenty years earlier.

8. The present law is too timid. It permits the Collector to object to a lease, and after that ordeal, it permits the Civil Court to catch up what the Collector let go. I would rather require the Collector (under the control of the Commissioner and of the Board) to allow or disallow; he is, or ought to be, or at any rate the public interest will justly presume that he is, competent to determine whether the condition of the lands proposed for the lease is such as it is represented to be; and being

specially alive to those cases in which farmers were mere substitutes for tehseldars, and acting under such instructions as prudence and future experience may suggest, I think the Collector's acceptance of a lease should secure its continuance for any period within thirty-five years. I do not say that in no case should a farm of rents be permitted to outlive a sale; but, putting mixed cases aside, that is leases of rents together with abandoned and uncleared land, I can well conceive that the Board would be justified in refusing to acknowledge a lease which alienated to a farmer more than a fair percentage. And sometimes it might happen, in considering a lease tendered for acceptance, if it should appear that the limits of the farm comprised a large share of the Zemindaree, the Board (or the authorities acting under the Board) might find it necessary to require the Zemindar to exhibit a schedule of the entire assets of his Estate. It should, at all events, be well understood that no provision corresponding with Clause 5, Section XXVI. Act I. of 1845, is needed either to facilitate the collection of rents or to enable Zemindars to forestall rents by alienating, for a consideration, the annual profits of a long future.

9. Again Clause 5, Section XXVI. Act I. of 1845, permits a farm to be quashed in the Civil Courts provided it shall not have been granted "in good faith." It is not clear what this expression "good faith" here means. A farm granted at a low rent may still have been granted in good faith. And possibly a farm granted at a moderate rent may have been granted in bad faith. If the term do not refer to the amount of rent agreed to between the parties, it may possibly refer to fictitious farms; to farms granted ostensibly to the lessee, but really to or for the benefit of the lessor. Should this be the meaning of the term, it would be preferable to define *in totidem verbis*, in the body of our law, an illegality which shall be deemed sufficient grounds for annulling the farm. A somewhat similar provision already exists in Section XXIX. By that Section no Zemindar who re-purchases his Estate can quash under-tenures. Hereupon on under-tenant must lie the onus of proving, that not the ostensible sale purchaser, but the late proprietor, is still in possession of the Estate. In the same manner I would provide that no farm granted by a Zemindar for his own benefit, or for the benefit of his heirs, successors or representatives, should survive a sale for arrears of Revenue. We might not by this provision succeed in discovering and quashing every lease which in the meaning of the law we should hold to be granted in bad faith; but we should impose an efficient check upon irregular practices.

10. It will be understood that I recommend this extension of Clause 5, Section XXVI. only upon the proviso that the Board are prepared to undertake an efficient revision of the terms upon which the leases tendered for the acceptance of the Revenue authorities, are based. Parties tendering a lease for acceptance should be prepared to submit simultaneously a specific statement of the area of the proposed farm grounded upon an actual measurement; a detailed return of its rent, assets, and jumma-wasil-bakees for five years; and it should still be optional with the Board to direct any further investigation they may consider necessary. This wholesome rule would interpose no obstacle to the enterprize of a farmer, who should desire to acquire land with the excellent object set forth by Mr. Mackenzie. On the contrary, it is the declared design of efficient preliminary inquiries to secure the continuance of a lease for the period stipulated.

11. In the fourth para. of your letter you observe that the Board are disposed to declare leases to be good for the whole time they were granted, provided the terms of the lease were and continued to be complied with. This I think too indefinite to be compatible with security to the farmer. The rule could only be enforced when the written conditions were of the most positive kind. An agreement to clear and cultivate 2,000 beegahs within fifteen years, is definite; and at the end of fifteen years, by measurement, it could readily be ascertained whether the agreement had been fulfilled. So, when a farmer covenants to plant 1,00,000 Date trees within a fixed period, the number of trees planted within that period could be counted. I see no objection to such conditions being prescribed, and (with allowances for unexpected difficulties) being enforced; but very many cases must arise in which it would be impossible, certainly inexpedient, to define what kind of products should be cultivated, or to tie up the hands of a farmer throughout the vicissitudes of a long lease. Even as regards Date trees, a farmer would not be able always to do as he wished. His planting operations would frequently depend upon his success in conciliating the ryots, and upon their agreeing to abandon the annual crops to which they have hitherto been accustomed, and to substitute a new article of cultivation, which for seven years could give them no return.

12. Perhaps the following points exhibit the most important matters to be provided for in a new law.

(1.) Leases for thirty-five years (renewable* for a further period of fifteen years on terms originally agreed upon, should no sale for arrears occur within fifteen years from the date of such lease.)

* This renewal may be just in Date-tree cultivation, and for the reclaiming of waste land; no other case occurs to me in which 35 years need be exceeded.

(2.) Application of parties to be accompanied with papers of a specific measurement; details of jummas payable by under-tenants and return of five years' collections.

(3.) Collector shall be bound to allow or disallow the protection of special law.

(4.) Sudder Board of Revenue shall publish Bye-laws, by which the proceedings of Collector, and the exercise of their own authority, shall be guided.

(5.) Leases may be registered at option of parties, not beyond one month of sanction of Collector: but applications for lease to be notified to Collector by both parties.

(6.) *Provided* that no farm shall survive a sale for arrears of Revenue, on its being proved in the Civil Court that it was granted by the late Proprietor for his own benefit, or for the benefit of his heirs, representatives, or successors.

(7.) And *provided* no farm sanctioned by Collector shall stand after a sale for arrears, on its being proved in a civil suit, instituted within ten years of date of lease, that the measurement jumma or realized collections were misstated to the extent of 10 per cent.

13. In this abstract I have said nothing of junglebooree clearings; but I see no objection to specially provide that tenures granted by a Zemindar for unreclaimed land shall be hereditary tenures, not annulable by a sale for arrears, and assessable in the event of a sale at no higher rate than the rate of Rice lands. For the reason already given, however, I would not so sanction large tracts in one grant; and as a matter of course, it would be a necessary condition that within a fixed period a certain portion should be under cultivation.

14. My experience has been gathered within so contracted a sphere, that I fear I may have omitted many circumstances that affect the Districts where a more profitable agriculture has been already introduced. And, such as it is, I submit this letter, perfectly sensible how much discussion and fuller knowledge will strike out what is imperfect, from the suggestions which I have ventured to make.

I have the honor to be, &c.,

Chittagong, the 19th February, 1850. A. SCONCE.

No. 12.

FROM R. H. MYTTON, ESQ.,
Officiating Commissioner of Dacca.

TO THE SUDDER BOARD OF REVENUE,

FORT WILLIAM.

Dated the 4th March, 1850.

GENTLEMEN,

I have the honor to acknowledge receipt of your Secretary's letter No. 21, of the 1st ultimo, asking my opinion on the subject of Mr. Mackenzie's letter to Government respecting Date Cultivation.

2. The subject, as your Board justly remark, is one of importance, but I am inclined to think that a Court would uphold *bonâ fide* leases at fair rents for Date, Cocoanut, Betelnut, Coffee and Mulberry plantations, under Clause 4, Section XXVI. of Act I. 1845. These lands would in Settlement papers be recorded as "*Baghat,*" the Persian word for "gardens," which are protected. Moreover the Clause protects leases for clearing of jungle or like beneficial purposes, and if the plantations were considered not strictly to come under the head of "gardens," they might (provided the rent were fair) be considered "beneficial."

3. If I am wrong in my constructions, I think that there can be no objection to enacting that a protection similar to that granted under Clause 4, Section XXVI. of Act I. 1845, and on the same conditions, shall extend to leases for Date and other similar cultivation requiring a long period to bring to profit. The proposal contained in your 4th Para. does not provide as a condition of the lease being upheld, that it be "at "a fair rate," which is essential to the security of the Revenue, and which is one of the conditions of protection under Clause 4, Section XXVI.

I have the honor to be, &c.,

R. H. MYTTON,
Officiating Commissioner of Revenue.

COMMISSIONER'S OFFICE, DACCA DIVISION,
Dacca, the 4th March, 1850.

No. 13.

FROM JOHN S. TORRENS, Esq.,

To GEORGE PLOWDEN, Esq.,
Secretary to the Board of Revenue,

Dated the 13th March, 1850.

SIR,

I have the honor to acknowledge the receipt of your letter to my address of the 1st ultimo, No. 21, with enclosures, and to submit to the Board that it appears leases of the nature contemplated by them could only be given, with full security to the Revenue, in all cases which might arise, under the conditions specified in Section XXVIII. Act I. of 1845. With these conditions duly provided, I think there could be no objection to allow Proprietors to grant leases for the purpose of plantations and agricultural improvements, which should not be affected by sales for arrears of Revenue, so long as the bids covered the amount of the arrear for which the Estate of the Proprietors was advertised.

It might also afford security to the holders of leases of the kind, if distinct instructions were issued to the Collectors, to receive from any of them the full amount of arrears due on any Estate, within a reasonable time *after* the last day of payment, and after the amount thus due had been ascertained and declared, as I have known cases in which Proprietors have endeavored to keep parties interested in the preservation of an Estate from attachment and sale, in ignorance of their default on the last day, in the hope that a tender of payment would not be subsequently received by the Collector.

I have the honor to be, &c.,

JOHN S. TORRENS.

CALCUTTA,
The 13th March, 1850.

No. 14.

FROM C. T. DAVIDSON, ESQ.
Collector of Tirhoot.

To G. PLOWDEN, ESQ.
Secretary to the Sudder Board of Revenue,
FORT WILLIAM.

Dated the 16th March, 1850.

SIR,

I have the honor to acknowledge the receipt of your letter, No. 21, dated the 1st ultimo, transmitting copy of a letter, addressed by Mr. J. Mackenzie of Jingergatcha, in zillah Jessore, to the Secretary to Government, seeking special protection in favor of Date Cultivation, against the power conferred under Section XXVI. of Act I. of 1845 on Purchasers of Estates, sold for arrears of Government Revenue, to cancel leases and enhance the rents of all under-tenants in such Estates, and desiring me to state my opinion on the subject of Mr. Mackenzie's application, and whether any objections to a compliance therewith affecting the Revenue occur to me.

2. There can be no doubt that Date Plantations can never be held to come within the exceptions enumerated in the fourth Clause of Section XXVI. To the questions whether special protection should be afforded to Date and other similar cultivation, and if so, in what way and to what extent, I would submit in reply that further protection than that now afforded by Act I. of 1845, appears to me to be unnecessary. In the first place, Clause 5 of Section XXVI. secures *bonâ fide* leases on fair rents for twenty years. This period alone would give the Date planter, according to Mr. Mackenzie's communication, about fourteen years' usufruct, *after* the trees had come to maturity; and secondly, it appears to me a question whether, in the event of the existence of a longer lease, the provision contained in the latter part of Section XXVII. does not effectually protect under-tenants against the contingencies apprehended in the 3rd and 4th paras. of Mr. Mackenzie's letter. But even admitting that twenty years is the extent of positive security afforded by the law, still Section XXVII. gives the Government power, when it shall

seem proper, to cause an Estate to be *sold subject to the leases and engagements* entered into by the Proprietor in possession, or his predecessors; and there can be no doubt that in a case such as that put by Mr. Mackenzie, the Government would, on the recommendation of the Board, most willingly exercise this power.

3rd. In regard to objections affecting the Revenue, I can only observe, that if the Date Cultivation is to be confined "to sandy and "other soils, which but for this cultivation would be otherwise barren "and unproductive," and in which Mr. Mackenzie states it "flourishes "best," none present themselves to me; on the contrary, increased means for discharging the Government Revenue are likely to be provided.

I have the honor to be, &c.,

C. T. DAVIDSON,
Collector.

TIRHOOT COLLECTORSHIP,
16*th March*, 1853.

No. 15.

FROM JAMES ALEXANDER, ESQ.,
Officiating Judge of East Burdwan,

To G. PLOWDEN, ESQ.,
Secretary to the Sudder Board of Revenue,

FORT WILLIAM.

Dated the 1*st April*, 1850.

SIR,

I have the honor to acknowledge your letter, No. 34, dated March 22nd, 1850, together with its enclosure. The Board, in the third paragraph of their letter, dated February 1st, 1850, have recorded their opinion that leases for Date Plantations are not protected by the provi-

sions of Clause 4, Section XXVI., Act I. of 1845, and propose the question whether leases for this and similar purposes are entitled to special protection; and, if so, in what way and to what extent the protection should be granted. It would undoubtedly be of great moment to give legal sanction to the creation of such sub-tenures as may secure to the tenant-cultivator his possession of them, until he is repaid by the produce from them for his outlay.

The difficulty experienced by a landlord in obtaining advances on the security of his property, renders it very necessary to exercise caution in granting protection to leases, because by the sale of them a means will at once be offered to him of anticipating his revenues, by receiving his rents in advance. I presume that the Board do not conceive that leases for Date gardens would be protected by Clause 4, Section XXVI., Regulation I. of 1845, because their extent would deprive them of the character of gardens; it is this same extent which appears to me to open the door to fraud. Presuming that a plantation might consist of from one to three hundred beegahs, there will be nothing to prevent the constitution of Talooks under the guise of leases for plantations; and although the law stipulates for the *bonâ fide* employment of the land for the purposes for which it was leased, yet purchasers will always fear, lest in their endeavour to set aside fraudulent leases, they may be met with assertions that the land is employed for the purpose for which it is leased, and thus the question of whether the lease is fraudulent or not, may be reduced to a mere matter of opinion. It will be possible to anticipate this evil, by ruling that not only a lease must be registered, but also a specific undertaking on the part of the in-coming tenant to perform certain works in each of the first few years of his lease, the failure of such performance to void the lease. In order to regulate these undertakings, some previous acquaintance with the subject would be necessary, but wherever enclosure of the part leased could be insisted on as a preliminary measure, without any great and unnecessary outlay of capital or loss of ground, it would be a condition of the utmost importance. In the absence of actual enclosure, the most careful specification of external boundaries would be imperatively necessary. It would of course be understood that the most liberal construction should always be put on these undertakings, and that leases would not be voidable from any variations from the original specification, unless such variation plainly indicated a fraudulent intent to avoid the fulfilment of the original conditions of the lease.

The duration of leases granted under this precaution, might safely be left as matter for adjustment between the parties interested.

I am clearly of opinion, that a law empowering such leases, would materially benefit the country; first, as giving stimulus and encouragement to the outlay of capital and employment of labor; secondly, as creating a new species of security on which capital might be advanced; thirdly, as increasing the amount of exports.

I have the honor to be &c.,

JAMES ALEXANDER,
Officiating Judge.

ZILLAH EAST BURDWAN,
The 1st April, 1850.

No. 16.

FROM THE SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS.

TO THE SECRETARY TO THE SUDDER BOARD OF REVENUE.

Dated the 13th April, 1850.

SIR,

I have the honor to acknowledge the receipt of your letter, No. 14, dated the 1st ultimo, with its enclosures, and in obedience to the request contained in it, that I would state my opinion on the subject of the papers then forwarded to me, particularly with reference to the modification suggested by Mr. Mackenzie, of Clause 4, Section XXVI. of Act I. of 1845, I have the honor to submit the following remarks.

2. Mr. Mackenzie complains that he and others engaged in the plantation and cultivation of Date trees in Jessore and the neighbouring Districts, have been prevented from extending that cultivation so widely as they otherwise would have done, by the uncertainty of the tenure of land; he represents that the Date tree does not yield juice fit for the

manufacture of Sugar until about seven years after it has been planted, and that it continues to yield produce from thirty to fifty years; that the planter can procure lands for the planting of Date trees only by taking pottahs from the Zemindars; that by the law, as it at present stands, these pottahs, after the sale of the Estate in which the lands are situated for arrears of Revenue, are liable to be cancelled by the new purchaser, and the lands may be re-assessed by him at his discretion; that this power places the property of the planter entirely at the Zemindar's mercy, and is destructive of all agricultural improvement; that the extension of Clause 4, Section XXVI. of Act I. of 1845, to Date Plantations, &c., should it be determined that they are not included within the terms used in that Section, or the extension of Clause 5 of Section XXVI. of the same law, to these engagements, so altered as to render the leases good so long as the lands remain under Date cultivation, with the security offered by registry and the approval of the Collector, would afford to the planter the necessary security, and not in any way endanger the Government Revenue; would cause also a great increase in the planting of Date trees, and the manufacture of Sugar, increase the demand for labor, raise wages, and thereby improve generally the condition of the agricultural community.

3. The request contained in Mr. Mackenzie's letter, is not new. The propriety of allowing as a general rule all *bonâ fide* leases granted by Zemindars to stand, notwithstanding the sale of the Estate in which the lands were situated for arrears of Revenue, provided that the Government Revenue did not suffer by such a course, was discussed when the provisions of Act XII. of 1841 were under settlement, and found an advocate in the then Secretary to Government; for reasons, however, with which I am unacquainted, the scheme was not carried out, and the law just cited was enacted, substantially the same with that now in force, *viz.*, Act I. of 1845.

4. The subject may be divided into two sections, the one legal, the other economical; the first embraces the question whether under the law as it at present stands, the tenures alluded to by Mr. Mackenzie can be considered to fall within Clause 4, Section XXVI. of Act I. of 1845; the second involves the consideration, whether, granting that all Mr. Mackenzie's statements are correct, it is advisable so far to modify the system of land tenures established, whether for good or evil is not now the question, at the Decennial Settlement, as to accede to the proposal contained in that gentleman's letter.

5. In considering the legal division of the subject, the only difficulty that occurs is the laying down with legal precision the meaning to be attached to the word garden. The term is one that pervades the Regulations; we meet with it first in Section VIII. of Regulation XLIV. of 1793, then again in Section XXX. of Regulation XI. of 1822, whence it was continued on in Clause 4, Section XXVII. of Act XII. of 1841, and in Clause 4, Section XXVI. Act I. of 1845: in all these places the word alone is used, and no assistance is afforded in determining the exact sense in which it was used by the Legislature; in the absence, therefore, of any proof that the word was used in a technical sense, its ordinary meaning must be attached to it, which would seem to be a piece of ground, of greater or less extent, enclosed and cultivated with herbs or fruits. This definition excludes, it will be observed, all plantations of trees bearing produce which requires a process of manufacture ere it can be rendered fit for the use of man, and of course will exclude the plantations alluded to by Mr. Mackenzie.

6. It is, however, to be remarked, that by Section XXVIII. of Act I. of 1845, the local Government has the power, when it shall seem proper, at any time before a sale for arrears shall have been actually made, to direct it to be made, subject to all leases, assignments, or other encumbrances with which a proprietor in possession, his ancestors or predecessors, may have burdened his Estate, or to such of them as shall appear proper; though, therefore, this law does not give the perfect security required by Mr. Mackenzie, but grants as an indulgence that which is now sought to have recognized as a right by statute; still, if leases of the nature of those under review can be shown to the Collector satisfactorily to have been granted in good faith, and at fair rents, there can be little doubt but that Government would make use of the powers entrusted to it under this law. There is, therefore, no practical hardship in the law as it at present stands, though of course leases protected by indulgence, are less saleable in the market than those protected by acknowledged right in the Statute book.

7. As, then, the general law of protection by right, as it at present stands, would seem not to include plantations of the nature of that specified by Mr. Mackenzie, it remains to inquire whether, on economical principles, it would be expedient, considering the circumstances of this part of the country, to extend it to them.

8. That Mr. Mackenzie's proposition might be acceeded to with such limitations and provisos as would secure to Government its Revenue,

may be allowed, and doubtless the experienced Revenue Officers, whose opinion has been solicited, will have so advised the Board: to them, therefore I leave this portion of the subject, simply observing that the question whether Government will be able, under a certain state of things, to secure its Revenue, though a matter of great importance to Government, is independent of the economical part of the question, which embraces a consideration of the laws of property as they have existed in the Lower Provinces for a period of sixty years.

9. It is not open to any one at the present time to discuss the question as if it were *res integra*. The system established at the time of the Decennial Settlement may be good or bad, that is not now under discussion; that Settlement, with all its deficiencies, must be taken as a fact of more than half a century's duration, and the question remains whether, with this fact before us, it is expedient so far to interfere with that Settlement, and all its subsequent arrangements, as to accede to the proposition now made by Mr. Mackenzie.

10. Under the Decennial Settlement, as is well known, the right of property in land in the Lower Provinces, was declared to be with the Zemindar, and certain parties had by Statute, as against the Zemindars, rights of occupancy of their lands at fixed rates; the Estates of the Zemindars were hypothecated to Government for their Revenue, and were liable to sale for any arrears of Revenue accruing on them; in the event of such a sale, all leases granted by the out-going Zemindar, and unprotected by the Regulations of 1793, fall, and the Estate comes into the possession of the new purchaser in exactly the same condition as to encumbrances, as it was in at the period of the Settlement.

11. Such was the theory, and practice was strictly conformable to it up to the period of the enactment of Act XII. of 1841, when a Clause was inserted in the law, protecting *bonâ fide* leases at fair rents for twenty years, which had obtained the sanction of the Collector; this Clause has, I am given to understand, in most districts, been a dead letter, so that its practical effect may be considered as nothing.

12. Keeping then in mind the theory and practice of the law now existing, it seems to me that the three following propositions may be in general terms asserted:

First,—That no interference should be sanctioned by law with the clear indubitable right of every landlord to let his own land on his own terms.

Secondly,—That the tendency of the law should be to encourage the granting of leases for such terms as will promote good cultivation.

Thirdly,—That in the event of a tenant being ousted from his land under the operation of the Sale Law, the out-going tenant should have against the in-coming Zemindar a right to compensation for the outlay made by him for which he has not received a remunerating return, and the benefit of which outlay will, in the end, appertain to the Zemindar.

13. To the first of these propositions little or no objection will, I apprehend, be offered. That Government has the power of limiting, whensoever and howsoever it pleases, the conditions under which the rights of property may be exercised, is undoubted, it is only here contended that after these conditions have been once determined, nothing but a strong necessity should move the Legislature to an interference with that system which its own previous acts have, if not created, at least encouraged; and the reason for this non-interference is clear; the relations between landlord and tenant become much more intimate than they would be were either party looking to the Legislature for the definition of its rights; those rights are, or should be, in these Provinces, founded on mutual interest, and the good-will which such a bond creates is, when realized, one of the surest marks of social happiness, if not of social progress.

14. Indubitably, in this country, we do not see the full advantage of the system of non-interference; circumstances, which it is needless he to detail, have tended to throw the responsible duties attaching landholders upon persons unworthy of exercising or incapable of appreciating them, and the result has been, that the most important class of the community, the ryots, have come to look upon the Zemindars simply as unreasonable demanders of rent, and aiders and abettors in all sorts of tyrannical practices; no Government can expect immediate results from any act of its own; time, however, and education will probably at last produce a race of Zemindars keenly alive to their own rights and interests, and equally so to those of others, and at the same time fully sensible of the duties which their station as landholders entails upon them.

15. The second and third propositions should be considered together, and when so considered seem to offer everything that can reasonably be demanded from the Zemindars. However complex a thing rent may be in England and other countries, here it is simply the price paid for the use of the land, which in all civilized societies partakes of the nature of a monopoly, though not of the strictest kind; this price varies with the varying price of the produce of the land; the greater the

demand for this is, unless production advances with equal steps, the higher will be its price, and the larger the surplus profits out of which rent is paid, the higher therefore should be Zemindar's share of these profits, in other words of his rent; by giving a tenant ejected by the laws in force a right of compensation against the Zemindar for capital expended, for which no adequate return has been made, a check is placed upon indiscriminate ejectment, and the tenant gains all that he has a right to ask for, *viz.*, a fair return for his money; whereas by the adoption of Mr. Mackenzie's long leases, the advantages of increase of price, in that of Sugar for instance, would, for a long series of years, go altogether into the pockets of the leaseholder, and the present Zemindar, himself not a party to the lease,* would be altogether deprived of a portion of those profits to which he is justly entitled as a return for the use of his land.

*This is written on an assumption that intermediately a sale for arrears of Revenue has taken place.

16. If the law at present does not allow of compensation being granted in the mode above suggested, an Act might† be passed for the purpose, and no difficulty, it is apprehended, would occur in its preparation.

† I do not here enter into details, as they would be out of place.

17. It appears to me, therefore, that sound principle does not allow of the introduction of Mr. Mackenzie's long leases into the Decennial-settled Provinces; but it may be said that, granting that it is opposed to principle, still the results to be obtained by the adoption of this system are such as to warrant its adoption. Doubtless the introduction of capital into the country is a great benefit, and if such an end could be obtained only by this scheme it might be worthy of immediate adoption; but such is not the case in Jessore and other districts. English capital has flowed into these under the operation of another system. In these districts and others in which the Date tree flourishes, that tree is considered the main stay of the ryot; come what season may, the produce of his Date trees enables him to pay his rent to the Zemindar. The planters have hitherto purchased the juice from the ryots, who, finding a steady demand for it, and good pay-masters, have, under the unvarying motive law of human nature, *viz.*, self-interest, increased their Date plantations, with a view of meeting the continued demand; it is also for the Zemindar's interest that these plantations should be increased, for the certainty of the payment of rent on the ryot's part depends in a great measure upon this increase: self-interest, therefore, leads them to deal fairly with their ryots, and if a planter were to become a ryot, with or without lease,

there is no valid ground for supposing that the same means would not be resorted to for the same end. I notice this point the more particularly, for there runs through Mr. Mackenzie's letter an assumption that the Zemindars will act in a mode detrimental to their own interests, and this supposed line of conduct, displayed in the ejectment of good tenants, is made the ground for the proposal now under discussion.

18. That therefore capital will continue to flow into this country under the system just detailed, I have no doubt; if however Planters were to become tenants generally, and to plant Date trees, I am strongly of opinion that leases for twenty years would amply repay them for any outlay during the first years of the plantation. These however are matters of calculation, and as I am not in possession of the data upon which the assertion is made that a twenty years' lease would not give a fair return, it is useless to pursue this part of the subject further; my impression is that the statement is incorrect.

19. Altogether, then, I am of opinion that in the Decennial-settled Provinces neither sound economical principles admit, nor the actual circumstances of the country call for, the introduction of fifty years' leases, but that the law as it at present stands, with one slight addition regarding compensation, is amply sufficient for the security of all classes of the community.

I have the honor to be, &c.,

C. B. TREVOR,
Supdt. and Remr. of Legal Affairs.

FORT WILLIAM,
The 13th April, 1850.

No. 17.

NOTE.

In December 1849, Mr. J. Mackenzie, a considerable Indigo and Sugar planter in Jessore, presented a petition, in which he represented the difficulties that had to be contended with by himself and other parties engaged in the plantation and cultivation of Date trees, owing to the uncertainty of the law in respect to the effect which a sale for arrears of Revenue would have upon lands held under leases for this purpose.

Mr. Mackenzie observed as follows :—

"The produce of Sugar from the Date tree has now become one of "the principal staples of three or four large Districts in Bengal, and "large as the extension of the cultivation has been in the last twelve "years, nothing but the uncertainty of the tenure of the land has "prevented its being enormously increased.

"You are aware that the Date tree does not yield juice fit for the "manufacture of Sugar, until about seven years after it is planted, but "that it will last from thirty to fifty years. The planter therefore "does not get any return until after the lapse of a long period, and the "expenditure of considerable outlay. The Date flourishes best in sandy "and other soils, which but for this cultivation would be barren and "unproductive, and plantations would consequently be most effectively "made in isolated tracts, over a large extent of country. Under the "present system, the only mode by which a planter can procure lands "is by taking pottahs from the Zemindar for specific areas, and though "these leases would be binding on any one inheriting the Zemindaree, "or becoming the proprietor by private purchase, still, in the event of "a sale for default of payment of the Revenue, no pottah could be "drawn under existing Regulations that would prevent the purchaser "at such a sale from demanding rents for each tree, at such an exor-"bitant rate as virtually to take all the profit, and destroy the property "of the planter.

"Though Government sales of Estates have not been frequent of late "years, it is a contingency to which all holders of tenures under "Zemindars are liable, preventing the investment of capital and any "attempt to permanently improve the country. Moreover it is far "from improbable that cases will occur when the Zemindar, seeing that "large tracts of land, formerly unproductive, which he had leased to

" the Date tree planter, now yield a handsome return, may avail of " the power which the Regulations afford, to cancel these leases, by a " collusive transfer of his Zemindaree to his own relations or dependants, " and which can be so easily managed by allowing the Estate to run " into arrears of Revenue, without its being in the planter's power to " prove the fraud, or at any rate not until after tedious and expensive " litigation, during which time he would be deprived of his property.

After some observations on the state of the law, Mr. Mackenzie proceeds:—

" In asking for a specific Regulation for Date tree lands, I ground " my request on the fact that, whilst nearly all other crops are annual, " so that the farmer reaps the fruit of his labours in one or at most " two seasons, the Date requires many years before it gives any " produce; and certainty of tenure and undisturbed possession are " essentially requisite to the planting being carried on to a large extent, " and with vigour and efficiency.

" That even now it is a business of no trifling importance, the " returns obtained by Government of its present extent amply prove; " and since unhappily the attempts to cultivate and manufacture Sugar " from cane under European superintendence, and by improved machi- " nery, have in every instance failed, it must be well worth while to " encourage by every means the new and permanent source of supply " which the cultivation of the Date offers.

" From the data given in Mr. Robinson's ' Sugar Planter's Manual,' " and from the result of my own inquiries and experience, I feel confi- " dent in stating that a beegah of suitable land planted with 100 Date " trees, would, when in full bearing, yield annually fifty maunds of " goor, which would give one-third of that quantity, as the produce in " dry Sugar or ' pucka cheenee'.

" One acre would therefore produce upwards of a ton and three " quarters of Sugar, which is considerably beyond the average which " Sugar-cane yields in the West Indies and elsewhere; and even at a " lower rate of produce 3,00,000 beegahs of Date trees would give " annually 1,50,000 tons of Sugar; about half the consumption of " Great Britain; which would increase the exports of the article from " this country from its present limit of eighteen lakhs of maunds to " forty-five to fifty lakhs of maunds annually, reducing the price to " the Home consumer whilst at the same time it in every way benefits " this country."

Mr. Mackenzie asked for such a modification of Section XXVI. Act No. I. of 1845 as would specifically bring Date Plantations within the lands exempted from the ordinary operation of a Revenue sale, or at least that the term of *bonâ fide* leases so exempted should be extended from twenty to (say) fifty years.

And it is hereby enacted that the purchaser of an Estate sold under this Act, for the recovery of arrears due on account of the same, in the permanently-settled Districts of Bengal, Behar, Orissa and Benares, shall acquire the Estate free from all encumbrances which may have been imposed upon it after the time of Settlement, and shall be entitled, after notice given under Section X. Regulation V. of 1812, to enhance at discretion (anything in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said Estate, and to eject all tenants thereof with the following exceptions:

First,—Tenures which were held as Istimraree or Mokurreree, at a fixed rent, more than 12 years before the Permanent Settlement.

Secondly,—Tenures existing at the time of the Decennial Settlement, which have not been or may not be proved to be liable to increase of assessment on the grounds stated in Section LI. Regulation VIII. of 1793.

Thirdly,—Lands held by koodkasht or kudeemee ryots having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulations in force.

Fourthly,—Lands held under *bonâ fide* leases, at fair rents, temporary or perpetual, for the erection of dwelling-houses, or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases.

Fifthly.—Farms granted in good faith, at fair rents, and for specified areas, by a former proprietor, for terms not exceeding twenty years, under written leases, registered within a month from their date. Provided that a written notice, specifying full particulars of the position, rent and area of the lands, the terms of the lease, and the names of the parties, shall at the same time be given by the latter to the Collector, in every case, and the Collector shall be at liberty to object to the same, in the event of his seeing reason to believe that the security of the Public Revenue will be materially affected thereby. The exception declared in this Clause shall not extend to leases objected to by the Collector, by a notification to be fixed up in his office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties. Provided also, that a purchaser of an Estate at a sale for arrears of Revenue, shall be at liberty, by suit in Court, to set aside all such farms, although the same be under written and duly registered leases, and although such notice may have been given as aforesaid, if the same shall not have been granted in good faith at fair rents.

The Section referred to is given on the margin.* It provides that a sale for arrears of Revenue shall avoid all under-tenures, with certain specified exceptions, in which Date Plantations are not included.

Mr. Mackenzie's petition was referred to the Board of Revenue, and the Board, after consulting several of the most able and experienced Revenue officers,* and taking the opinion of the Legal Remembrancer, submitted some time back a report on the subject, which, with Mr. Mackenzie's petition, and another of the same purport from Messrs. Gladstone Wyllie and Co., has now to be considered.

Mr. Mills is of opinion that it is the duty of Government to remove the insuperable objection which

* Mr. A. J. M. Mills, Mr. A. Forbes, Mr. A. Sconce, Mr. R. H. Mytton, Mr. J. S. Torrens, Mr. C. T. Davidson, Mr. J. Alexander.

now stands in the way of expending capital in promoting the manufacture of Sugar from the Date tree, and that the protection desired should be given. He would declare all *bond fide* leases, whether for Date plantation, Cocoanut plantation, Coffee plantation or Betelnut plantation, as well as all other leases, productive of agricultural and commercial advantages, to continue in force and effect, notwithstanding a sale for arrears of Revenue, so long as the land is duly appropriated to such purposes, and the stipulated rent is paid. He would amend the 5th Clause Section XXVI. Act I. of 1845 to this effect, subjecting the lease to the approval of the Collector and Commissioner as therein provided, and to the proviso contained in the concluding paragraph, to wit, "that the purchaser is at liberty. by suit in "Court, to set aside the said leases if the same shall not have been "granted in good faith, at fair rents."

Mr. Forbes doubts the necessity for any alteration of the law, on the ground that if Mr. Mackenzie and persons in his position are actual cultivators of the soil, they are already sufficiently protected as koodkasht ryots under the 3rd Clause, but that if they are intermediate between the actual cultivator and the Zemindar, they need no further protection than is given by the 5th Clause. If any alteration is made, it should be confined to a more specific definition of "koodkasht and kudeemee ryots." Mr. Forbes objects to grant any further protection to middle-men, as it would, in his opinion, lead to frauds on purchasers, and oppression on the ryots.

Mr. Sconce would not legislate exclusively for Date tree planations, nor would he encourage leases for more than a definite period, (say 35 years renewable for 15 years more on certain conditions). To entitle leases to protection against the effects of a sale, they should be registered, with specification of area and rental, in the Collector's Office, and approved by the Collector. Leases made for the benefit of the proprietor or his heirs, and leases incorrectly specified beyond a certain margin, to be void.

Mr. Mytton is disposed to think that Date Plantations are already protected by the law under the denomination of "gardens," but, if not, he thinks the protection ought to be extended to such plantations by special enactment.

Mr. Torrens thinks that proprietors might be allowed "to grant "leases for the purpose of plantations and agricultural improvement, "which should not be affected by sales for arrears of Revenue, so long "as the bids covered the amount of the arrears."

Mr. Davidson thinks that no change is required, the protection given by Section XXVII., and at all events the power vested in Government by Section XXVIII., of exempting tenures from the operation of sale being sufficient.

Mr. Alexander admits that "it would undoubtedly be of great "moment to give legal sanction to the creation of such sub-tenures as "may secure to the tenant-cultivator his possession of them until he is "repaid by the produce from them for his outlay," but that caution is necessary in granting such protection as it will enable landholders, to anticipate their rents. On the whole, Mr. Alexander is of opinion "that a law empowering such leases would materially benefit the "country—first, as giving stimulus and encouragement to the outlay of "capital and employment of labor; secondly, as creating a new species "of security, on which capital might be advanced; thirdly, as increasing "the amount of exports."

Mr. Trevor, the Legal Remembrancer, is clearly of opinion that Date Plantations are not protected under the law as it stands, though he adverts to the fact that under Section XXVIII., the Government may give special protection in particular cases.

The Board* are divided in opinion, both as to the meaning of the law as it stands, and as to the alterations that are required.

* Messrs. Gordon and Ricketts.

Mr. Gordon thinks that Date Plantations are protected by Clause 4, Section XXVI., but that if there be any doubt on this point, the clause should be extended by the addition of a word to meet such cases.

Mr. Ricketts, on the other hand, goes with the Legal Remembrancer in thinking that Date Plantations are not protected in such a manner as to give any confidence to farmers, and he would protect them completely, without any reservation as to *bonâ fide* leases or fair rents. Mr. Ricketts would not confine the measure to Date Plantations, but he would protect every registered under-tenure for any period not exceeding 99 years, against the consequence of a sale, except when the Government was the purchaser.

The minutes of the members are submitted with the record.

Thus the question of protecting Date Tree Plantations, originally raised by Mr. Mackenzie, has, fortunately perhaps, re-opened the general question of upholding under-tenures, which was discussed at length in 1840-41, before the new Sale Law was passed, and which ended in an unsatisfactory compromise, whereby, instead of the most perfect system

of protection compatible with the security of the Revenue, there was established a very imperfect and insufficient legal protection, coupled with a power in the hands of Government to extend it in particular instances, which power never has been, and probably never will be, exercised.

The proposal now made by Mr. Ricketts originated in 1840, with Mr. Halliday, who remarked on this part of the Draft Sale Act then under discussion as follows:

"To this Section I have strong objections, and this seems the proper "place to suggest the alteration to which I have alluded in my remark "on Section I. Sale for arrears of Revenue is a great evil, though an "unavoidable one. It is our duty to make the evil no greater than is "absolutely necessary for the purpose for which sales are provided. "Perhaps the greatest of all evils belonging to sales is the insecurity "which they bring upon under-tenants of all descriptions, and the "mischievous power of annoyance and interference and extortion, "which they give to a new auction purchaser over his under-tenants. "If we can ameliorate nothing else belonging to sales, we ought, at all "events, to endeavour to amend this; for if ever any great improve-"ment is to happen to this country, it must come by means of the "introduction, as *under-tenants* of Zemindars, of men of skill, capital "and enterprize. As the law now is, (and the new law will not much "improve it,) no man of skill would or could have anything to do with "under-tenures; at least no man could without great risk. Conceive, "for instance, the contingency to a farmer for 20 years, desirous of "laying out, or perhaps having laid out, large capital on his farm, of "being threatened (as he usually would be), with a suit at law by every "new purchaser, and being put on his proof once every two or three "years, or as often as a sale might take place, or conceive, what is still "worse, the condition of poor and more defenceless tenants under such "a system. Clearly no such interference should be permitted if it can "be avoided.

"Now the only reason which can at all justify the power given by "law to auction purchasers, and the effect produced by law after a "sale on under-tenants, is the necessity of securing the Revenue of "Government. So far, therefore, as the power and the effect are really "necessary to this, their legitimate object, the law is defensible, but "not a jot beyond this. If A., the present zemindar of a Mehal, paying "1,000 Rupees to Government, have by any means reduced the rents

" of his tenants from 2,000 Rupees to 800 Rupees, the Government " Revenue is in peril, and the law ought to be enforced in case of sale. " But if from 2,000 Rupees he have reduced the rents to 1,500 Rupees, " the Government Revenue may not thereby be emperilled, and the " law, *not* being wanted, ought not to have effect after a sale.

" On the whole, the entire absence of bids at a sale, is a pretty fair " proof that the Mehal cannot pay its jumma one year with another. " Want of bids proves of course other things besides this ; but, generally " speaking, it may be safely taken to prove, that the receipts from the " Mehal from some cause or other are likely to be less to a purchaser, " than would enable him to meet the Government demand from year " to year.

" Whenever, therefore, there are no bids equal to the balance, there " can be but little reason to doubt that the Government Revenue from " that Mehal is in peril; and that in the Mehal in which it occurs, the " necessity *has* arisen for the otherwise unjustifiable interference with " under-tenures which at present takes place on all occasions of sale, " whether the Revenue is in jeopardy or not.

" The Decennial or Permanent Settlement was in each case a " contract between the State and the Zemindar, and his heirs and " assigns in perpetuity, and on failure of payment, sale was provided " as a means of remedying the infringement of the contract, and of " transferring the contract to new hands. But it appears never to " have been expected that Mehals would be unsaleable, or that they " would ever be found to produce at sale, a less price than would " suffice to pay the whole balance; or so nearly the whole, that the " remainder might always be realized by distraint on the defaulter.

" It is clear, however, that in any case in which the putting up of a " defaulter's Estate to sale for its balance, produces *no bids*, or no bids " equal to the balance, the contract of the Decennial Settlement by " that very circumstance is voided, and the Mehal may be made " forthwith to return to the hands of the State, without any violation " of the principles of the Decennial Settlement, or rather, in perfect " accordance with them.

" The real effect of such a course of law is at present produced in " practice, by the clumsy expedient of bidding and buying on the part " of Government, but there are some peculiar objections to this plan, " and it would be far better that the same thing should be brought " about in a simple manner by direct consequence of Law. I would

" enact, then, that no under-tenures of any description should be in " any degree affected by the act of sale, and that the purchaser should " succeed to the rights of his predecessor, whatever they might have " been or might be, to be settled in case of dispute, like all other " rights, *viz.*, by suit in Court,—and that, in the event of the bidding " at any sale for arrears of Revenue not coming up to the balance due, " the sale should be postponed until the next periodical sale, fixed as " aforesaid; when, if the bidding should still fall short of the balance " due, the contract be declared void, and the Mehal to have lapsed to " Government, free from all encumbrances other than those existing at " the time of the Decennial Settlement. *Provided*, however, that this " shall not be held to authorize the Government to enhance rents or " otherwise disturb possession in,

1*st*. " Tenures which were held as istimraree or mokurreree at a " fixed rent, more than twelve years before the Permanent Settlement.

2*nd*. " Tenures existing at the time of the Decennial Settlement, " and which have not been or may not be proved to be liable to increase " of assessment on the grounds stated in Section LI. Regulation " VIII. 1793.

3*rd*. " Lands held by Koodkasht or Kudeemee ryots having rights " of occupancy at fixed rates.

4*th*. " Lands held under *bond fide* leases, temporary or perpetual, " for the erection of dwelling-houses and manufactories, and being so " used, or for gardens, tanks, canals, or like purposes.

" For the rest I am of opinion that the Government may be fairly " and safely trusted to deal equitably and justly with all classes of " tenants not included in the above exceptions.

" As in Section XXXVII. of the Draft, I would enact that the " burthen of proof of exemption under the above exceptions shall be " on the tenant.

" It is obvious that the security of under-tenants would be vastly " increased by the alteration I propose. Instead of being liable to " interruption and interference in every case of sale, they would incur " that liability only when the Estate fell into the hands of Govern- " ment, and they would incur this liability to interruption *only* from " hands least of all likely to convert it into abuse, and a means of " extortion.

" I conceive that this alteration in the Law would remove the chief " evil attendant upon sales of Estates for arrears of Revenue. The

" evil of disturbance to under-tenants would *never* happen, save when " it was really indispensable for the security of the Government " Revenue, and this is, in fact, the only case in which such an evil can " be justified.

" There can, I think, be no objection to this alteration of the Law on " the score of injury to purchasers. Purchasers, who inquire before " they buy, will give for their purchase no more than it is worth, and if " this covers the balance, the object of Government will be obtained. " Purchasers who buy without inquiry are not much to be pitied if " they make a bad bargain, *Caveat emptor.*

" Nor can there be any objection on the score of injury to the " defaulter. If he have by under-letting or other means reduced the " value of the property he will get a reduced price for it. If he has " reduced it below a value which would pay the balance, he has " committed a fraud, and will suffer for it. It is to be remembered, " however, that under the new Law balances can never be very heavy " at the time of sale, and it will be only in cases of great and flagrant " deterioration that the balance will ever exceed what is likely to be " bid for the Estate. With respect to under-tenants, I have already " shown that the alteration will be greatly in their favor. Disturbance " and dispossession will be the exception, instead of as now the rule; " and the disturbance, when it does come, will come from a quarter " disposed to indulgence and to equity.

" It will doubtless happen, sometimes, that an honest and *bonâ fide* " tenant will find himself, through the fraud or mismanagement of " others, exposed to peril of enhancement, but it will now only happen " in a very few cases instead of happening in all, and I do not believe " that such cases when they do occasionally present themselves, will " be treated by the Government otherwise than with fairness and " consideration."

The proposal was taken up by the Government of India and treated at some length, in the following paragraphs of Mr. Secretary Grant's letter of the 10th August, 1840 :—

" The effect which a sale for arrears of Revenue has on under- " tenures created since the Decennial Settlement, or liable at the time " of that Settlement to enhancement, is a matter of extreme importance. " The question is ably discussed, and the history and present state of " the Law on this point are clearly explained in paras. 95 to 129 of the " Calcutta Board's letter,

"The President in Council feels it unnecessary to consider whether "it was by oversight or intentionally, that holders of Talooks created "since the Decennial Settlement were, by Regulation XI. of 1822, ren- "dered liable to ejectment, as well as to a regulated enhancement of "rent by a sale. He is clearly of opinion that enhancement of rent is "the only power necessary to be given to auction purchasers in such "cases; and he has therefore retained the provisions of the Draft "prepared by the Board, in this respect, for the permanently-settled "Provinces.

"The President in Council has adopted in the Draft Act the "proposal made in your letter under reply, for saving *bonâ fide* leases "to farmers, for terms not exceeding 20 years, and at adequate rents, "from being affected by an auction sale. This provision, His Honor "in Council is convinced, will be another very great improvement on "the present law.

"But His Honor in Council would wish the Revenue Authorities to "give their best attention to the principle whereby auction purchasers "acquire rights over certain *bonâ fide* under-tenures, greater than "those vested in the late defaulting proprietors; with the view of "determining whether the practical enforcement of that principle "is not susceptible of still further restrictions, without danger to "the security of the public Revenue, as insured by the perpetual "hypothecation of the land itself.

"There is no question, His Honor in Council observes, but that "the enhancement of the rent of under-holdings, created perhaps forty "or fifty years back, and held for all that time in good faith, without "fault on the part of the holder, merely because of the fault of his "superior, which he has no means either to prevent or remedy, is a "severe hardship to the individual, and must operate injuriously on the "interests of agriculture generally, by the uncertainty which it creates. "This evil, therefore, obviously, ought to be lessened as much as "possible, and on no account to be extended beyond the necessity of "the case. It is impossible to allow, without restriction, tenures made "after Settlement to be valid, as against Government, because thereby, "the Revenue would be in constant jeopardy. In point of fact, the "Zemindar's whole Estate being originally liable for the Revenue "assessed upon it, any tenure created by him after Settlement at a "rent inadequate to afford its share of that Revenue, is, so far as "Government is concerned, essentially fraudulent and void *ab initio*.

" There is no hardship, therefore, nor injustice, in voiding that tenure " *to the extent required for the security of Government*, whenever the " Revenue of Government fails: and the right to do so can never, " under any system, be abandoned by the State. But the necessity of " voiding the tenure *in toto*, (and the right to enhance according to the " present value of the land differs not in principal from absolute annul- " ment,) is not so apparent. So far as the Zemindar sells or gives away " to an under-holder any part of his *profit* from the land included " in the tenure, or right to profit from its future improvement, the " transaction is essentially good, and it affects the rights of no third " parties. So also there seems to be no absolute necessity for Govern- " ment to interfere with any transaction between the Zemindar and an " under-tenant, when the Zemindar falls into arrears, unless *in conse-* " *quence of that transaction* the arrears would be lost, and the future " Revenue would be risked, by reason of the Zemindar's rights becoming " unsaleable. It is manifest that to abstain from such interference is " no more than justice to the under-tenant, and no less than justice " to the superior, who has himself already made over his interest, or " part of it, to another. It must be presumed, that, under the " present law, any loss to an under-tenant who had given a valuable " consideration for his tenure, arising from the sale of the Zemindaree " owing to the default of the Zemindar, is recoverable by the under- " tenant from the defaulting Zemindar by a civil suit; for the Zemindar " has sold the same thing twice, once to the under-tenant, and again to " the auction purchaser. But it would be better to prevent, if possible, " the necessity of such a suit, and to provide against the risk of the " Zemindar's insolvency attending it.

" Mr. Halliday has suggested a scheme whereby all *bonâ fide* under- " tenures of whatsoever description shall be maintained at an auction " sale, in the same manner as at a private sale; but if the Zemindaree, " under such circumstances, be not purchased, then all the rights of " the defaulting Zemindar shall lapse to Government, who shall enter " in his place with a right to levy the Revenue directly from the land, " after a re-settlement of all the under-tenures now liable to annulment " or enhancement of rent by an auction purchaser.

" No strong objection to such a scheme, on the ground of risk to " the public Revenue, at present occurs to His Honor in Council; for " so long as the Zemindaree is saleable, so long must the Revenue be " secure.

" Such a change of Law would be no hardship on the Zemindar. A " Zemindar in arrear has a right to claim that his Estate be offered for " sale, in order that he may obtain its value after payment of what is " due from it. But when his Estate is found to be unsaleable, it is " apparent that he and his ancestors have already divested themselves " of the whole of their interest, which consisted only of the Zemindaree " *profits*. The re-entry of Government into the management of the " collection of the Revenue assessed in the land is then natural; and " practically it is nothing more, as it affects the Zemindar, than the " present custom of purchasing on account of Government for one " rupee. It is clear that as between the Zemindar and Government, " an Estate is unsaleable when it will not realize a sum equal to the " arrears for which it is put up for sale.

" It is apparent that such a change of Law would be an unqualified " benefit conferred upon the holders of under-tenures liable at " present to enhancement of rent, or to annulment, by an auction " purchaser.

" Fully to carry out the principle explained in paragraph 22, it would " seem to His Honor in Council necessary to add provisions against " the re-settlement of any Talooks which existed at the time of the " existing assessment of Revenue, at a rate higher than was paid by such " Talooks at the time of that assessment, and against the enhancement " of the rent of any *bonâ fide* tenure, whether permanent or temporary, " when the rate of rent before paid thereon to the Zemindar is not " inadequate to afford the due proportion of the jumma assessed upon " the Estate.

" The President in Council would be glad if the Revenue Authorities " were to consider this matter with attention, and report what they " think of the proposal, particularly what difficulties, if any, they " anticipate as likely to occur in the way of the practical working of a " scheme of this nature, and to what extent they think the principle " can be acted upon with safety."

Mr. Halliday's proposal was supported by Messrs. Pattle, Lowis, Ravenshaw and Brown, and as regards permanently-settled Estates by Mr. Thomason and the Board of Revenue in the North-Western Provinces. It was opposed by Messrs. Gordon, C. W. Smith, Davidson and Harvey.

The objections to the scheme are stated most clearly and fully by Mr. C. W Smith in the following words:

" But I proceed to mention some of those evils, which in my opinion " would arise from introducing the momentous change of principle now " advocated, *i. e.* that the purchaser of an Estate at a sale for arrears " of Revenue, shall only purchase the Estate with all *bonâ fide* tenures " of every description, or in other words the rights and interests of the " late Zemindar, not as he found them, but as he left them, and that " when the Estate under such circumstances shall not be purchased, " shall not find a bidder for it at the full amount of balances due, " it shall lapse to Government, with power to re-settle the Estate " and all its tenures, which under the present Law are liable to " annulment or enhancement of rent by an auction purchaser, but " without the necessity of Civil actions.

" *First,*—Surely it cannot be the interest of Government to confer " legality upon all the wild waste, and spendthrift acts of a debauched " proprietor, or to give such additional encouragement to his vice and " extravagance, and superadded facilities to effect his own ruin, and " that of his family, by removing every obstacle to his obtaining " large loans?

" *Secondly,*—Nor can it be the interest of Government to lend its " willing aid to the depreciation of landed property, or to the more " frequent occurrence of sales, and the changing of hands in the " proprietorship of Estates, by the opening thus given to all the " fraudulent alienations which any proprietor, having his eye to an " approaching sale, may make, in the name of his relations and " dependants, without fear of the consequences, or any chance of " detection.

" *Thirdly,*—Undoubtedly it is not the interest of any Government " to hasten by its legislative acts that period when landed Estates shall " generally arrive at an unsaleable state, and for want of purchasers " fall into the hands of Government, and the tenantry fall into the " hands of ill-paid Ameens, and reckless and oppresive Tehsildars.

" *Fourthly,*—Neither is it the interest or the policy of a wise and " paternal Government, gratuitously to remove the principle which " perpetuates the integrity of the Revenue and resources of Estates under " the Decennial Settlement, and legalize such a lasting reduction in the " resources of landed property, that even a change of Proprietors by " public sale should cease to work its remedy, so that, in the event of " any succession of calamitous seasons, not only would the distress be " increased, but greatly protracted, by the want of those additional " resources which that principle is intended to keep up.

" *Fifthly*,—Would it not wear the appearance of unmitigated injustice, " that while on the one hand the Government aimed a blow at the " value of landed property, by making the purchase in very many " instances so valueless as to deter parties from purchasing, (for such " would be the effect of upholding under-tenures of every description,) it " on the other hand reserved to itself the very privilege of annulment and " enhancement, (with all the facilities and immunities of Regulation " VII. of 1822,) which it denied to the common purchaser. Would " it not be said, and would it not also appear as if the Government, " finding itself outwardly bound to respect the Permanent Settlement, " took this under-hand manner of possessing itself of the landed " property?

" Nothing in my opinion could compensate for the loss of that " high character as a liberal and beneficent Government, which a " measure so fraught with danger, so destructive of the attributes of " a moral Government, and which tends to establish so invidious and " partial a law between the case of a common purchaser and the " Government as purchaser, would undoubtedly occasion throughout " the empire."

His Lordship will judge how far these objections weigh against the advantages that may be expected to flow from giving security to all ryots and under-tenants of every description against the effects of a Revenue sale, so far as is compatible with the security of the Revenue. The distinction between the transfer of an Estate by Revenue sale to an auction purchaser, and its forfeiture to Government for want of purchasers, seems to me too obvious to mislead the most ignorant, or to leave the smallest ground for imputation of unfair dealing. The Zemindaree rent of every Estate is composed of two distinct elements, *viz.*, the Government Revenue, fixed in perpetuity, and the margin of profit (as it may be called) left to the Zemindar. So long as a Zemindar confines the diminution of his rent to the extent of the latter element, the true policy of Government is to leave him to do what he likes with his own. But the moment he infringes upon the Revenue, for which the Estate is hypothecated in perpetuity to the State, the condition of his tenure is violated, and the security of the Revenue requires that the Estate should lapse to the Government, in the condition in which it was in 1793, subject only to such limitations upon the public demand as the Government may see fit by law to impose upon itself.

The proposal was opposed in the Legislative Council by Mr. H. T. Prinsep, on the ground that it would encourage jobbers and middle-men and the spirit in which the Governor General* gave his assent to the law as it stands, may be gathered from the following extract from His Lordship's Minute:

* Lord Auckland.

"The rule in this Clause respecting a security to farming leases, under "certain circumstances in the event of a sale, is regarded by me with "peculiar interest. The indiscriminate destruction of under-tenures "by a sale for arrears has always been considered as one of the chief "blemishes of our system, and I earnestly hope, that this experiment "to give some certainty and security to leases, may prove successful. We "propose to give stability, on the conditions specified, for twenty years, "and not to perpetual leases, because, at least as a first step, it may "be unwise to run the hazard of error in regard to a perpetual tenure, "which we may yet be justified in incurring for a limited term, and "because twenty years may fairly be considered a sufficient term to admit "of good return for capital employed upon land. Under the precau- "tions provided, I do not anticipate any serious danger to the Revenue "from such leases: while to have required in every instance a previ- "ous approbation from the Collector, would, it may be feared, have "probably nearly defeated the object of the Clause. It is exceedingly "likely that experience may show that the provisions of the Clause "might have been much amended; but as a foundation of what I hope "will be a very beneficial change, I cordially vote for its being passed "in its present form, which has been settled after repeated and careful "discussions."

In my humble opinion the enactment of a law for the Permanently-settled Provinces, based on Mr. Halliday's proposal, would tend in the highest degree to enhance the value of the landed property, to encourage the employment of capital, to protect the ryot from extortion, and (in a word) to develop and improve the agricultural and commercial resources of Bengal.

If His Lordship should be disposed to take this view of the question, and to recommend the consideration of it to the Government of India, I append the draft of an Act, which may at least serve as a foundation for further proceedings.

Act No. ——

Preamble.

For the better security of Under-tenants and Ryots, in the Permanently-settled Districts of the Presidency of Fort William in Bengal, it is enacted as follows:

Law repealed.

I. Section XXVI. Act No. I. of 1845, and so much of Section XXVIII. of the same Act as relates to the Permanently-settled Districts of Bengal, Behar, Orissa and Benares, are repealed.

Purchaser at a sale for arrears of Revenue, to succeed only to the rights and interests of the former proprietor.

II. The purchaser of an Estate sold under Act No. I. of 1845, for the recovery of arrears of land Revenue due on account of the same in the Permanently-settled Districts of Bengal, Behar, Orissa and Benares, shall acquire the Estate subject to all encumbrances which may have been imposed upon it either before or after the time of Settlement, by any former proprietor, and shall succeed to all the rights and interests of the former proprietors in the Estate as they existed at the time of sale.

Proviso.

Provided that no lease or engagement granted by any former proprietor shall have any validity whatever as against the purchaser, unless the same shall have been duly executed and registered, and possession given to the lessee at least three months previous to the date of sale. Provided also that the purchaser shall have no greater power to enhance the rents of under-tenants and ryots, whose liabilities have not been limited by express engagements, than that possessed by the former proprietor before the sale.

If no bidders, the Settlement to be void and the Estate forfeited to Government.

III. When an Estate is put up for sale under the said Act for the recovery of arrears of land Revenue due thereon, if there be no bid, or if the highest bid offered be insufficient in amount to cover the said arrears and those subsequently accruing up to the date of sale, the Collector shall postpone the sale to any subsequent day, not being a holiday, and not being less than one week or more than one month from the day first fixed. And if on the day to which the sale is so postponed there be no bid, or if the highest bid offered be insufficient to cover the said arrears and those subsequently accruing up to that day, the Collector shall declare the settlement void and the Estate forfeited to Government, and shall record a proceeding to that effect, and forward a copy thereof to the Commissioner of Revenue.

IV. The provisions of Sections XVII. XVIII. XIX. XX. XXII. XXIV. and XXXII. Act No. I. of 1845, relative to appeals against and annulment of sales, to the notification of sale and annulment, to the jurisdiction of the Civil Court, and to the right of defaulting proprietors, shall apply so far as the same may be applicable, in the case of forfeitures under this Act.

Certain provisions of Act No. I. of 1845, applicable to forfeitures.

V. When an Estate has thus been declared forfeited, the Government shall acquire it free from all encumbrances which may have been imposed upon it after the time of Settlement, and shall be entitled to enhance, diminish, alter and fix at discretion (anything in the existing Regulations or Acts to the contrary notwithstanding) the rents of all ryots and under-tenures in the said Estate, and to eject all tenants thereof, with the following exceptions:

Government to acquire forfeited Estate free of all encumbrances.

First,—Tenures which were held as istimraree or mookureree at a fixed rent more than twelve years before the Permanent Settlement.

Exceptions.

Secondly,—Tenures existing at the time of the Permanent Settlement, which have not been, or may not be proved to be liable to increase of assessment on the grounds stated in Section LI. Regulation VIII. of 1793.

Thirdly,—Lands held by koodkasht or kudeemee ryots, having rights of occupancy at fixed rents, or at rents assessable according to fixed rules under the Regulations or Acts in force.

Fourthly,—Lands held under *bonâ fide* leases, at fair rents, temporary or perpetual, for the erection of dwelling-houses or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases.

Fifthly,—Lands not exceeding ten beegahs which have been held exempt from the payment of Revenue or rent without interruption since the 1st December, 1790.

VI. The provisions of Regulation VII. of 1822 and Regulation IX. of 1825 shall be in force in all Estates which may be declared forfeited to Government under this Act, and in all Estates which have been or may hereafter be purchased on account of Government.

Provisions of Regulation VII. of 1822 and Regulation IX. of 1825 applicable to forfeited Estates.

VII. In all cases in which lands are claimed to be held exempt from enhancement of rent under the fourth exemption set forth in Section V. of this Act; the Collector, subject to an appeal within three calendar months to the Commissioner of Revenue (whose decision thereon shall be final), shall determine whether the leases under which such lands may be claimed are *bonâ fide* or at fair rents, and whether the lands continue to be used for the purposes specified in the leases; and the award of the Revenue Officers on such points under this Section shall not be set aside by the judgment or order of any Civil Court. But no occupier of land held under a *bonâ fide* lease, and still used for the purpose specified therein, shall be liable to be ejected on the ground that the rent is not fair, provided he agree to pay such enhanced rate of rent as the Collector, subject to an appeal to the Commissioner of Revenue, may determine.

Revenue authorities to determine what are *bonâ fide* leases at fair rents.

CECIL BEADON,
Secretary to the Government of Bengal.

The 10*th September*, 1852.

No. 18.

MINUTE BY THE MOST NOBLE THE GOVERNOR OF BENGAL.

Under-tenures in Bengal.

1. I have very carefully considered the important change which it is proposed to make in the law of sale for arrears of public Revenue.

I regard it as of the highest value for giving that security to the property of the ordinary cultivator, or of the man of enterprize and capital, without which it is hopeless to expect any substantial improvement in Bengal, or any material increase of its resources. I therefore cordially agree to the provisions which enact, that the sale of an Estate for arrears of public Revenue to a purchaser at auction, shall not invalidate the under-tenures on the Estate.

2. The case in which the Government becomes the purchaser of an Estate so sold, in the absence of any other bidders, is so distinct from the case in which a purchaser is found in the market, that I am surprised to find there are objectors to the provision, that the Government when so purchasing shall have the power of invalidating some of the under-tenures, which ordinary purchasers are not to have.

By rendering the Estate unable to pay the public Revenue, which was the absolute condition on which he received the Estate, the Zemindar has broken faith with the Government that granted it, and has injured its rights. The Government has a fair claim to such powers as will enable it to repair that injury, and to replace itself in as good a position as it originally occupied, when it made the contract that has been dishonestly violated by the Zemindar. The proposed Act gives such power to the Government, and no more. It is fenced in by conditions very liberal to holders of under-tenures; and no one can pretend to believe that there will be any abuse in its exercise by the Government.

3. I am still, however, inclined to think that *perpetual* leases ought not to be favorably recognized, except in the case of manufactories, tanks, or permanent buildings. I conceive that a perpetual lease for any agricultural purpose can hardly be advisable.

DALHOUSIE.

The 21st October, 1852.

APPENDIX.

HISTORY OF ACT NO. XII. OF 1841.

An Act for Amending the Bengal Code in regard to Sales of Land for Arrears of Revenue.

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1. On the 27th August 1831, the Accountant General brought to the notice of Government "a very considerable increase of "arrears" in the Land Revenue Accounts of the Districts in which the Fussilly Era prevailed; which, he added, "if not checked, either by more vigilant superintendence, or change "of system," could not fail "to operate prejudicially on the finances of the country."

Bengal Revenue Consultation, 10th November, 1834, No. 67 to 69.

2. The Sudder Board of Revenue, from whom an explanation of the cause of the increase of the outstanding balances in the Benares Division had been requested, ascribed it to the inefficiency of the Local Authorities, rather than to the effect of the operation of Regulation VII. 1830, then recently enacted in amendment of the Sale Law, Regulation XI. 1822; but they remarked, at the same time, that they were not in a position to determine whether the system introduced by Regulation VII. of 1830 operated beneficially, or otherwise; because sufficient time had not elapsed since its promulgation to enable them to test its practical effects.

Ditto ditto, Nos. 71 and 72.

3. Referring to this last remark, the Board were instructed, under date the 21st February, 1832, to watch the operation of Regulation VII. 1830, and to submit a report to Government as soon as they should consider themselves qualified to express an opinion on the subject.

Ditto ditto, No. 75.

4. This report was submitted by the Board on the 11th September following, together with a statement of the Revenue balances outstanding in the Lower Provinces on the 31st December, 1831, compared with the corresponding period of the year preceding. The statement showed that the increase of balances within the short period of one year amounted to rupees 12,70,621. The Board's explanation of the causes which led to the accumulation of this great increase is contained in the 6th paragraph of their letter to Government, in which they remarked that though tardiness and irregularity of collection, and the failure from natural causes of the crops of 1831, had doubtless some share in it, they were nevertheless of opinion that the increase in question was mainly attributable to the defective operation of the rules in force for the realization of the Revenue.

Ditto ditto, No. 83.

Ditto ditto, Nos. 84 and 85.

5. Regulation VII. 1830, the Board considered, had failed to effect the objects proposed by it.* They pointed out that whilst Sections V, and VI, of that Law rendered it indispensable, that sixty days should elapse, after the Revenue was actually due, before the payment of it could be enforced by sale, no order of confirmation could be issued under Clause 2, Section XXIV. Regulation XI. 1822, until 30 days from the date of sale; so that three months at least must elapse before the purchaser could gain possession; and that even then an appeal lay to the Sudder Board, during which possession might be suspended, or the purchaser might be required to give security to refund the assets, provided the sale should be set aside. These delays, added to the uncertainty generated by the well-known aversion of the higher authorities to confirm sales, had combined, in the judgment of the Board, to render the process of sale for the recovery of arrears inoperative, and to retard the realization of the Revenue, both by discouraging bidders from coming forward, and by encouraging defaulters to hold back until the last moment, and to look upon a sale of their lands, even when consummated by a Collector, as anything but a final measure.

* "The disposition of the Malgoozars to withhold payment till the last moment, owing partly to the high rate of interest obtainable for money in the Mofussil, and partly to other causes, gave rise to the supposition that the Rules and Regulations for the levy of interest and penalty, were not sufficient to ensure punctuality of payment. The provisions for regulating the process of sale, and in regard to the time and mode of making good the purchase money, were also considered to require modification, and to remedy these inconveniences, Regulation VII. 1830 was passed, to be in force in the Settled Provinces."

Para. 7 of the Board's letter, dated 11th September, 1832.

It fixed the amount of interest and penalty at 25 per cent.; and dispensed with the previous transmission of sale advertisements for the sanction of the Commissioners, and empowered the Collector to advertise Estates in balance, and to proceed to actual sale, without such reference. Much time and labor were also saved to the Collector and his native establishment, in bringing lands to sale for the recovery of arrears, by the substitution of a general notification to be published at the Police Thannah or Moonsiff's Cutcherry, of lands to be sold, in lieu of the notice of sale, which by Section VII. Regulation XI. 1822, was required to be served upon each defaulter.

6. The Board went on to show why even interest and penalty, as enforced under Regulation VII. 1830, at the very heavy rate of 25 per cent., did not operate as a sufficient stimulus upon the dilatory habits of the Malgoozars—first, because they were generally unable to borrow at a lower rate; and secondly, because of the facility of exacting a similar, or even higher per centage from their tenantry. Nor did the "consolidated "interest and penalty," when paid, fall upon the Zemindars themselves; it came out of the pockets of the poorest classes of cultivators, by whom, therefore, in fact, the penalty for the remissness of their superiors was borne. Such a system, in the words of the Board, could not but in the end undermine, to a most serious extent, the foundations of all agricultural prosperity; and it was for the suppression of this practice principally, that the Board suggested the shortening of the process of sale; whereby the Government demand would also be more readily realized, and the balance sheet of the public accounts divested of sums which assuredly had no business there.

7. The propositions of the Board for the amendment of the law are quoted at length on the margin.* To these propositions the Board added the following recommendations:—

*1st. That all Estates in balance, unless specially excepted by order of a Commissioner or of the Sudder Board, be advertised for sale immediately on the date of the arrear

1st. The re-enactment of Clause 3, Section XXIV. Regulation VII. 1799, (rescinded by Regu-

becoming due, instead of one month from that date, as at present prescribed.

2nd. That lands advertised for sale to make good an arrear shall be liable to be sold on the day fixed for the discharge of all arrears due therefrom up to the day of sale, (consolidated interest and penalty included,) whether such arrears shall have accrued prior, or subsequent to the date of the advertisement.

3rd. That the period during which a party whose lands have been sold is at liberty to present a petition to the Local Commissioner for the purpose of contesting a sale for arrears of revenue be reduced to 15 days from the date thereof, instead of a month, as prescribed by Clause 2, Section XXIV. Regulation XI. 1822, it being competent to that officer, as at present, to allow a further term if necessary for the purpose of investigation, or any other sufficient cause.

4th. That if the balance, for the recovery of which an Estate is advertised, be not discharged by the day of sale, it shall be competent to the Local Authorities, with the sanction of the Sudder Board and of Government, to proceed, under certain restrictions, in the mode authorized throughout the Province of Benares, by Clause 4, Section XVII. Regulation VI. 1795, and to let the Mehul in farm, for such period as under the circumstances of the case may be deemed expedient.

lation XI. 1822,) *under which Estates purchased benamee*, were liable to forfeiture at the discretion of Government; a power, in the estimation of the Board, highly necessary "to countervail the "temptations which induce defaulters to resort to "the fraudulent practice in question;"

AND

2nd. The substitution of Rupees 1,000 in the stead of Rupees 500, as the maximum of deposit of sale purchases, in order to check the common practice of defaulters purchasing their own Estates through second parties, with the intention of forfeiting the deposit, and merely to gain time.

8. In conclusion, the Board declared, that they were fully aware that the provisions which they recommended were of a peremptory nature, but that they were convinced, from the evidence afforded by the actual state of things, and the concurrent testimony of the Local Authorities, that the delay and uncertainty which attended the process of sale, were not only calculated to encourage the increase of arrears, but were prejudicial to the agricultural community at large; and that measures of a prompt and determined character were by far the most efficacious, and at the same time the best adapted to secure the real interests of all the parties concerned.

FIRST DRAFT.

* Bengal Revenue Consultation, 10th November, 1834, No. 88.

9. The Board accordingly submitted the Draft of a Regulation calculated to give effect to their views. The Draft is recorded as per margin.*

Ditto ditto, Nos. 89, 90, 94 and 95.

10. The several suggestions of the Board were fully discussed by the Vice President, (Sir Charles Metcalfe) and Messrs. Blunt and Ross, and orders in accordance with their views, were issued to the Board, under date the 26th August, 1833.

Ditto ditto, No. 96.

11. The Regulation proposed by the Board was approved, with the following amendments:

1st.—(Section II. of Draft.)—That the Clauses and Sections* cited in Section II. should be modified, not rescinded.

* Clause 2, Section XXIV. Regulation XI. of 1822 and Section VI. Regulation VII. of 1830.

2nd.—(Section III.)—That sale advertisements should not be issued until fifteen days after the Revenue to which they relate have fallen due.

3rd.—(Section V.)—That the words "not exceeding fifteen years" (referring to the term for which a defaulter's Estate may be farmed) should be omitted, and that a provision should be added for carrying to the credit of the defaulting proprietors, after all

demands against them had been satisfied, the excess of the jumma payable by the farmer, above that payable by them.

4th.—(Section VI.)—That a Clause should be added, restricting appeals to the Sudder Board from Commissioner's orders, to cases of illegal sale.

5th.—(Section VII. respecting *benamee* purchasers.)—It was not considered proper to revive the penalty of confiscation; the rule requiring a deposit of 15 per cent., which seemed sufficient to protect the Revenue, was to be revived by a rule of practice; and if it were necessary to fix a maximum, a discretion might be left to the Collector to demand a deposit of the whole percentage on a second or any subsequent sale, whenever collusion might be suspected.

12. The proposed sale law was thus sent back to be remoulded; and the Board were apprized, that the reasons stated by them and their subordinates, did not appear to Government to account satisfactorily for the increasing backwardness of the Zemindars to discharge the public Revenue. The Board's attention was directed to the operation of the laws of inheritance; which, by breaking down landed property into minute sub-divisions, and giving to every Estate, in the course of years, a number of co-proprietors, had a direct tendency to generate disputes, confusion, and mismanagement in the first instance, and, as a secondary consequence of the reduced and still diminishing value of each individual's share, to render the petty co-parceners indifferent as to the fate of the joint property. The Board were required to consider and report, whether, with a view to the remedy of these evils, it would not be expedient to enact a Regulation, requiring the co-sharers of every joint estate to appoint one manager for the whole proprietary body, for whose acts done in the management of the Estate, as well as for any arrear of the public Revenue accruing under his management, the whole body should be responsible, and whose acts only should be held legal and valid. The Board were directed to satisfy themselves as to the feeling of the landed proprietors in general regarding such a law.

13. The Government also pointed out the mischievous effects, upon agricultural industry and enterprise, of the law which declares all leases, except those guaranteed as permanent by the laws of 1793, to be avoided by the sale of the mehal, in which the lands under lease are situated, for the recovery of arrears of public Revenue. It was suggested that leases granted by Zemindars, or other competent persons, might safely be held valid, and not liable to be annulled, until adjudged to be collusive by a decree of a Court of Justice, passed in a regular suit; it being provided that such leases should be held by the Courts to be collusive, and should be annulled as such, if the rent which they stipulate for is less than the average rent paid for the land included in them, during the three years immediately preceding the date of the alleged engagement. As an additional security it was suggested that in the event of an Estate being held khas, or let in farm for the recovery of an arrear of Revenue, the Government might be empowered to annul any leases granted by the defaulter which the Sudder Board of Revenue, after full inquiry, might deem to be collusive and injurious to the public Revenue;—the order of Government in such cases to be final, and not liable to be interfered with by any Court of Justice.

The Board were instructed to submit the Draft of a Regulation in conformity with the sentiments of Government, as above expressed.

14. In their reply, dated the 19th September, 1834, *the Board submitted their views on the two points referred, as stated above, for their consideration; viz.*

Bengal Revenue Consultation, 10th November, 1834, No. 120.

1st.—The practical effect of the Hindoo and Mahomedan Laws of Inheritance, which allow an endless sub-division of property, on the realization of the Government Revenue;

AND

2nd.—The injury resulting to the agricultural interests by the operation of the system of annulling leases by auction purchasers of Estates sold for arrears of Revenue, whereby lease-holders were deprived of all security in the stability of their tenures.

15. On the first point, the Board observed, that under the existing law, the proprietors of joint undivided Estates, in the event of disputes existing among themselves, likely to endanger or deteriorate the common property, could separate, on application for partition, with an equal allotment of jumma. And further, the Collector was vested with power to appoint a *Surburakar*, or Manager, whenever a Court of Justice, on the showing of any of the joint proprietors, or of the Revenue Authorities, might consider such a measure expedient, and should authorize it. Thus, in the opinion of the Board, the laws in force were sufficient for the conduct of joint undivided estates, and they considered it both impolitic and unnecessary to introduce a new system, by which the joint proprietors would be compelled to appoint a manager in all cases. But the Board suggested, that the existing prohibition against a sharer in a joint undivided Estate purchasing the mehal when sold by the Collector for arrears of Revenue, should be withdrawn; and in order to guard against the abuse of this license, that any sharer or sharers aggrieved by the act of any one or more of their body, through whose conduct the lot might be brought to sale, and by whom it might then be purchased, should be empowered to sue the party for the recovery of his or their possessions, and for damages in the Civil Court.

Section X. Regulation I. of 1793.
Section VIII. Regulation I. of 1801.
Regulation XIX. of 1814.

Section XXVI. Regulation V. of 1812.
Regulation V. of 1827.

16. On the second point, the Board were of opinion, "that until the local judica-"ture be made everywhere adequate to the wants of Society, the proposed restriction "on the resumption of under-tenures would be highly *unjust* to the present proprietors, "and full of risk to the Government interests; inasmuch as it would greatly depreciate "the value of the proprietary rights which the Collector sells for the recovery of a "balance of Revenue, and seriously obstruct the realization of the current resources." At the same time, however, the Board declared, that they were fully sensible that the rules suggested by Government, in their orders of the 26th August, 1833, would afford very great protection and encouragement to agriculture; and the Junior Member (Mr. Bird,) was of opinion, that the existing law * was susceptible of much modification in favor of the tenant, without endangering in the least the interests of Government. He thought that annulling leases by the purchaser should be restricted to cases in which the engagements contracted between the late Proprietor and his under-tenants should

* With regard to the existing law (Section XXXI. Regulation XI. of 1822) under which Government could interfere at any time before a sale to uphold existing tenures, that is to say, to render them non-voidable by the sale, the Board observed in para. 42 of their Report:—"The law is little "known to the people, and the local "Officers are not sufficiently ac-

"quainted with the causes of balan-
"ces in individual estates, or with
"the state of property, to enable
"them to discriminate in what cases
"it would be proper to obtain for an
"under-tenant, or a mortgagee, an
"exemption from the resumption of
"his interest by an auction purcha-
"ser."

have originated in collusion, or fraud, and should interfere with the rights of the State. The Senior Member, (Mr. Pattle,) on the other hand, held, that the modification of the existing rule proposed by his colleague, would lead to intestine disputes and to an increase of litigation.

17. The Board added, that to render it at all feasible to protect under-tenures in the manner proposed, it would be indispensible to enact a strict law requiring the registration of all leases; "that purchasers at public sales may know the probable value of "what they are buying." And they proposed to consider this point, in connexion with the general subject of the Registry of Deeds.

18. In the same Report, the Board proceeded to inquire into the causes of the delay experienced since 1828-29 in the collection of the Revenue in the Permanently-Settled Provinces; and they attributed that delay "partly to the peculiar and distressed "circumstances of the times,* and partly to the "system of the fiscal Administration which has "obtained with reference to Regulation VII. of "1830."

* "It will be sufficient to advert to the universal distress produced by commercial failures—to the want of capital in the market—to the extinction of credit and uncertainty of tenure induced by Regulation VII. of 1830—to the decrease of trade, and to the influence which these calamitous changes have exercised on the value of money, and relatively on the price of landed property, and of all other things."

19. The senior member of the Board considered that the law of 1830 had been much more severe in practice than Regulation XI. of 1822, which preceded it; and the Board concurred in stating, that if the former enactment were carried into rigorous effect, with respect to the rapid succession in which one advertisement for sale is required to follow another, the land-holders withholding the payment of their Revenue to the last moment, its operation would be destructive of credit, and have altogether a baneful influence on all interests engaged in agriculture; by weakening the authority of the Zemindar over his tenantry, and by encouraging the latter to keep back their rents from their landlord at the very moment of his most urgent necessity, on account of the ostensible insecurity of his tenure under the impendence of constantly recurring sales.

20. These common premises led the members of the Board to very different conclusions. The senior member, (who appeared from the passage quoted on the margin, to consider it practicable to collect the Land Revenue without any resort to public sales,) recommended "the "appointment of fixed dates twice or thrice in the "year for the peremptory sales of land for the "recovery of arrears of Revenue due to Govern-"ment after the manner prescribed by Regulation VIII. of 1819 for the sale of Putnee "Talooks in realization of the Zemindar's demand of rent." The second member, (Mr. W. W. Bird,) on the other hand, "did not consider the Zemindars in such urgent "difficulty, and did not approve of peremptory sales at stated seasons, but was of "opinion that the Collectors should be left, as before the enactment of Regulation VII.

"For instance, it will be observed "from the minutes of the senior "member of this Board, (Mr. Pattle,) "*that so long as the prejudice obtains* "*that the system of selling Estates* "*affords the least objectionable and* "*most effectual means of securing the* "*important object for which it is em-*"*ployed*," &c. &c. see para. 19 of Board's Report.

" of 1830, to the exercise of a sound discretion in resorting to sales whenever they might " think proper." The passage quoted on the margin* from para. 19 of the Board's letter, will explain Mr. Bird's sentiments on this important branch of the general subject, and of the grounds on which they stand.

21. In regard to the mischiefs which had resulted from unseasonable and indiscriminate leniency in the execution of the Sale Laws, the Board appeared to be unanimous.† They stated, that " in some divisions, the " process had been so capricious- " ly controlled, as to have " seriously obstructed the execu- " tive authority (the Collector,) " in the realization of the Go- " vernment Assessment: to the " manifest encouragement of " default, the prevention of " competition at sales, and the " injury of the proprietors of " those Estates, the sales of " which, however depreciated " by these circumstances, had " been left uncancelled." By the mistaken leniency shown to those who were permitted to escape for a time, by the annulment of the sale of their Estates, they themselves, as well as all those cognizant of their impunity, were encouraged to persevere in systematic default; for it was a fact, that in some Districts, the payment of the Revenue by monthly instalments, formally stipulated at the Decennial Settlement, had altogether fallen into desuetude; and those who were unable, from whatever cause, to obtain like indulgence, were subjected to a very severe pecuniary mulct, in addition to the loss of their Estates, in the shape of the difference between the price which those Estates would have realized if competition were such as uniformity and steadiness of system would assuredly render it, and the inadequate sum for which they necessarily sold when the purchaser knew that in fact he was not buying an Estate, but a remote and very uncertain chance of obtaining one.

* " They, (the collectors,) ought, in Mr. Bird's judgment, to be responsible for the punctual realization of the Revenue of their districts, to be able to assign adequate causes for defalcation or comparative increases of balance in particular years or in particular seasons, of years, to be permitted, rather than to be compelled to have resort to sale; in short, to employ this ultimate instrument of coercing payment when necessary, and *as frequently as necessary*, but to realize the collections without it, if practicable. The commissioners of Revenue ought to be constantly watching the state of the Towjees, and to be preventing the accumulation of balances where no sufficient explanation can be given by the District Officer. It will take long, perhaps, to correct the inveterate habit which the Zemindars of the settled Provinces have contracted of postponing the discharge of their Revenue until their Estates are threatened with an auction sale, and Mr. Bird is not aware of any other process unless the system in the unsettled Provinces be introduced, by which the object can be attained; but he thinks that the propriety of resorting to it should be left in the first instance to the Collector, on whom rests the responsibility, and that when resorted to, the confirmation by superior authorities should be as prompt as possible. To dispense with it altogether, as under Regulation VIII. of 1819, in regard to Putnee Talooks, might overload the files of the Civil Courts to an inconvenient degree; but he is decidedly of opinion, that the latitude of discretion, and the irresolution which the proceedings of Commissioners of Revenue have evinced in respect to the confirmation of these sales, is the chief cause to which the progressive increase of the balances is to be ascribed. When a sale for instance is unavoidable, the sooner the measure is carried into execution the better for all interests affected thereby; and when there is little or no expectation of that result, the formality of an advertisement, by an invariable rule, one month after the demand has fallen due, is of an extremely doubtful expediency. The Collector is the only authority who can judge of the necessity of resorting to a sale or to an advertisement for compelling a payment of Revenue, and a discretion of advertising Estates and disposing of them for default by public auction ought, in the opinion of Mr. Bird, to be vested in that functionary, subject to the control of the Local Commissioner, both Officers being declared responsible for the due collection of the Government jumma."

† Mr. Pattle seems only to have dissented in a measure because of the harshness of Regulation VII. of 1830 in prescribing monthly sales.

22. The senior member professed himself "a strenuous advocate for a merciful "administration of the sale laws," and he doubted the ability of the land-holders, "in the present "state of agricultural distress, aggravated by the loss of credit occasioned by Regula- "tion VII. of 1830, to make good the demands of Government with monthly punctu- "ality." He was therefore of opinion, "that until times should mend, sales should be "avoided altogether;" and that the "Revenue Authorities, in preference to selling "landed property under the Regulation above quoted, should be authorized, with the "consent of the defaulting proprietor, to let in farm any Estate, the arrears of which "he was unable to liquidate; provision being made for carrying to the credit of the "defaulter, after all the dues to Government had been discharged, the excess of "the farming jumma over and above that of the sudder jumma of the Permanent "Settlement."

Para. 23 of Board's Report.

23. Mr. Pattle enumerated as an additional cause of agricultural distress, the imposition of consolidated interest and penalty at 25per cent. on arrears of Permanently-Settled Estates, introduced by Regulation VII. of 1830. He suggested, that if 25 per cent. be levied at all on arrears, the surplus proceeds of the sale, after discharging all arrears of Government Revenue, with interest thereon at 12 per cent., should be paid to the defaulter. But he thought it would be preferable, invariably, to levy 12 per cent. interest, and allow no remission of it, to levying both penalty and interest, and permitting remission. This would be a positive boon to the Zemindars, and would also be a gain to the Government, as it would prevent the omlah of the Collectors from taking advantage of the anxiety the double charge excited in the Zemindars, to compound for a less sum, while it was easy for them to move their superiors to compassion and remission, when they could not attain their object by concealment.

Paras. 28 and 29 of Board's Report.

24. The junior member (Mr. Bird) was favorable to the proposition for the discontinuance of the demand of penalty, on the ground, chiefly, that the rate of interest had fallen, since the penalty was originally imposed, from 12 to 6 per cent.; so that in continuing the demand for interest at 12 per cent., double the amount would still be levied on that head that could be procured for loans on good security in any other quarter. But he thought the demand of penalty should be relinquished without the reservation regarding the non-remission of interest recommended by the senior member.

25. The orders of Government on the Report of the Board were issued on the 10th of November 1834, to the following purport:

Bengal Revenue Consultation, 10th November 1834, No. 127.

26. The Council of India not having then opened its session in Calcutta, the subjects requiring legislation were unavoidably reserved for future consideration.

27. The suggestion made by Mr. Pattle, that sales should be limited to two or three periods in the year, was considered to involve much practical benefit to the people. But the information submitted by the Board was not sufficient to enable the Government to determine whether the proposal could be acted upon, without great risk to the punctual realization of the Revenue, or whether there might not be other

No. 19.

FROM

THE UNDER SECRETARY TO THE GOVERNMENT OF BENGAL,

TO

THE UNDER SECRETARY TO THE GOVERNMENT OF INDIA,

HOME DEPARTMENT.

Dated Fort William, the 21st October, 1852.

SIR,

Revenue.

I am directed by the Most Noble the Governor of Bengal to request that you will submit for the favorable consideration and orders of the Government of India the papers noted on the margin, relative to a proposed modification of Act I. of 1845, with a view to the protection of under-tenures in permanently-settled Districts against the effect of sale for arrears of Revenue.

From Mr. J. Mackenzie, dated 4th December, 1849.
To Secretary Sudder Board of Revenue, No. 1102, dated 26th December, 1849.
From Secretary Sudder Board of Revenue, No. 258, dated 28th May, 1850, with 9 Enclosures.
Note by Secretary, Mr. Beadon, dated 10th September, 1852.
Minute by His Lordship.

I have the honor to be, &c.,

J. W. DALRYMPLE,
Under Secy. to the Govt. of Bengal.

F. CARBERY, BENGAL MILITARY ORPHAN PRESS.

serious objections to its adoption. At all events, it was indispensable to ascertain what periodical days of sale ought to be fixed in each Province, and perhaps even in each District, with reference to crops and other circumstances. The Board were accordingly instructed to direct their attention to the subject; and if, after consulting the local Revenue authorities, they should consider it expedient to make a general rule of the nature above indicated, or to introduce the system experimentally into particular Districts or Divisions, to submit rules of practice, calculated to carry the plan into effect; which rules, if necessary, might be embodied in a Regulation.

28. In the mean while it was ordered, that the Collectors should be absolved from the obligation imposed by Section VI. Regulation VII. of 1830, to advertise Estates in balance by an invariable rule, if they should consider that measure unnecessary for the punctual realization of the Revenue. The issue of such advertisements, and the sale of Estates in arrears, were left to their discretion.

29. It was anticipated, that under this discretion, the Collectors, in some Districts, would probably, as a general rule, fix particular periods for sale; making exceptions in regard to particular Estates in balance, which they might deem it proper to advertise and sell intermediately; and it was pointed out to the Board, that the practical results of such measures would afford the best data for the ground-work of a general system, and would enable them to suggest, with confidence, such rules of practice as experience had shown to be useful and necessary. It was also intimated, that if the Collectors were instructed to exclude from their advertisements any Estates the proprietors of which might appear, on good and sufficient grounds, to be entitled to indulgence, it would soon be understood by the community, as well as by the defaulters, that Estates, when once advertised, would in general be sold, unless the arrears were paid;—an impression which would probably result, on the one hand, in the more punctual payment of the Revenue, and on the other hand in encouraging capitalists to attend sales, for the purpose of investing their money, in the confidence that nothing would be likely to stop the sale but the payment of the arrear.

30. The Collectors were generally authorized to purchase Estates on account of Government, when the amount bid might not cover the arrear with interest and penalty; such Estates were, if possible, to be farmed, in order to avoid the losses attendant in the great majority of instances upon khas management.

31. The right of appeal to the Sudder Board from orders of confirmation of a sale passed by a Commissioner, was restricted to cases of alleged illegality; in which the appellant might be able to show that one or more of the conditions which are declared by Section V. Regulation XI. of 1822, (subject to the modification laid down by Regulation VII. of 1830,) to be necessary to the validity of a sale, had been wanting.

32. The Board were instructed to direct the Commissioners to be cautious in the exercise of the discretion with which, as the representatives of the late Board of Revenue, they were invested by Regulation XI. of 1822, in respect to the annulment of sales.

33. The Government further desired, that the Collectors should invariably levy 12 per cent. interest upon all arrears, without enforcing the payment of the remaining amount of consolidated interest and penalty, (as prescribed by Regulation VII. of 1830,) unless they should have reason to believe the arrear to be wilful or fraudulent.

34. Finally, the Board were directed to consider the possibility of devising any other measures for securing the payment of the Revenue, so as to obviate the necessity of recourse to sale as the constant, and almost sole process of coercion.

35. In these orders no mention was made of the point originally raised by Mr. Ross, respecting the effect of sale on under-tenures.

36. The attention of the Sudder Board of Revenue was frequently* called by Government, after the issue of the above orders, to the preparation of a Revised Draft of a new Sale Law, and some correspondence on the subject passed between the Bengal Government and the Board. On the 13th of March, 1838, the Board answered these references, by the submission of a new Draft, with an elaborate report on the whole subject.

* 30th Aug. 1836, Para. 8. 21st Feby., 1837. 6th July, 1837. } Bengal Rev. Pro., 6th July 1837, No. 12. AND 21st Feby. 1837, No. 26.

Also Resolution of Government of India, dated 4th December, 1837. India Revenue Consultation, 4th December, 1837, No. 1.

SECOND DRAFT.

Legislative Consultation, 10th February, 1840, No. 7 to 9.

37. In this report, amongst many other points, the Board discussed the case of under-tenants. They considered such holders in no worse position, in respect to the consequences of sale, than mortgagees; and, for reasons which they assigned, they were quite opposed to the suggestion of making provision for securing, in case of a sale of the superior Estate, the titles and interests of either class. They would enable however any person whatever to pay the arrear, on account of the defaulter, and so to save the Estate from sale for the time being, if any person should choose so to do.

38. In discussing this question, the Board enter into a full and useful account of the history and then existing state of the law affecting under-tenures, in an Estate sold for arrears of Revenue.

39. In forwarding this Draft for the consideration of the Legislative Council, the Deputy Governor of Bengal, (the Hon'ble A. Ross,) objected to Sections XV. and XVI., which gave a discretionary power to the Commissioners of Revenue, and the Sudder Board to cancel a sale of an Estate for the recovery of an arrear of Revenue, made according to law:—"The frequency (the Deputy Governor "remarked), with which this power has been hitherto exercised, has considerably "reduced the prices obtained for Estates sold by public auction, by rendering the sta- "bility of such sales uncertain;" and His Honor was "inclined to think, that the can- "celment of a sale by any authority, should not be allowed on any ground but that of "illegality."

Legislative Consultation, 10th February 1840, No. 7.

40. Again, referring to Sections XXVI. to XXIX., which declared what are to be the consequences of a sale for the recovery of an arrear of Revenue to the under-tenures in the Estate sold, the Deputy Governor noticed, that "a farm under a lease for a limited "period, at a rent payable during such period equal to what the lands included in "the farm were capable of yielding when the lease was granted, was a *bonâ fide* "tenure;" and that "as such, its rent would be liable under the proposed Act to "enhancement." His Honor objected to this, "especially as the annulment of *bonâ* "*fide* temporary leases was not necessary for securing the Revenue from deterioration."

The great defect, His Honor thought, of the existing Sale Law, Regulation XI. of 1822, was, that it did not afford the security to leases of this description which was essential to the improvement of the agriculture of the country; and the Draft under consideration would only perpetuate this defect. As a remedy for the defect mentioned, His Honor proposed, "that it be enacted in the new law, that it shall not be lawful for the "purchaser of an Estate sold for an arrear of Revenue to annul a farming lease "granted by the defaulting, or by a former proprietor, for a term not exceeding twenty "years, and stipulating for the payment of an annual rent, not being less than the "average rent realized from the lands in the three years immediately preceding the "year in which the lease was granted."

41. The question of a revision of the Sale Laws being thus formally brought before the Government of India in a substantive form, was taken up, especially, by the Hon'ble Mr. Bird, who had previously, as a Member of the Revenue Board, taken a share in the discussions at the Board table when the former Draft of a new Sale Law was under preparation by that authority. Mr. Bird's examination of the subject resulted in his laying on the table of the Legislative Council an amended Draft, the circumstances attending the preparation of which are thus narrated in his Minute of the 17th January, 1839.

* THIRD DRAFT.
Legislative Consultation, 10th February, 1840, No. 12.

Legislative Consultation, 10th February, 1840, No. 11.

42. "The Draft of a new Sale Law submitted by the Government of Bengal "with Mr. Secretary Halliday's letter of the 10th of July last, appeared to contain "not only the defects pointed out in that letter, but was obnoxious to many other "grave and important objections. Several points, which had undergone frequent and "anxious discussion when I was Member of the Sudder Board of Revenue, were "totally overlooked, while others of very doubtful expediency had been introduced; "and in short the Draft was altogether so ill-adapted to the purpose for which it was "intended, and so confusedly and informally drawn up, that to recast it entirely was "absolutely and indispensably necessary.

"To do this in a manner corresponding with the importance of the case, I did "not like to trust entirely to my own judgment; "and accordingly placed myself in communica- "tion with the present Members of the Sudder "Board, with the Commissioner of Revenue for "the Twenty-four Pergunnahs, with the Secretary "to the Government of Bengal, and with the "Deputy Superintendent and Remembrancer of Legal Affairs; and the Draft now "submitted is the result of our collective deliberations."

James Pattle, Esq.
Charles Tucker, Esq.
R. D. Mangles, Esq.
John Lowis, Esq.
Edward Currie, Esq.
W. Dampier, Esq.
F. J. Halliday, Esq.
M. A. Biguell, Esq.

43. Several alterations suggested by the Right Hon'ble the Governor General, (Lord Auckland,) who was absent at the time from the Presidency, having been adopted by the Council, the Draft was read in Council for the first time on the 14th of October, 1839.*

Legislative Consultation, 10th February, 1840, No. 15.

* FOURTH DRAFT
(First Draft published.)
Legislative Consultation, 10th February, 1840, No. 16.

44. Several communications relative to the proposed Law were received by the Government of India: one from the Landholders' Society; others from individual Officers* of experience, submitted by them in a demi-official form. The substance of all these papers will be found digested and explained in the table recorded as per margin, which was printed, and forwarded to the Governments of Bengal and the North-Western Provinces, with the view of eliciting a discussion of the opinions and suggestions therein contained. In transmitting this table, the President in Council intimated, among other things, that he was clearly of opinion that enhancement of rent was the only power necessary to be given to auction purchasers of talooks created since the Decennial Settlement; and that, as suggested by the Government of Bengal, *bonâ fide* leases to farmers, for terms not exceeding twenty years, and at adequate rents, should not be disturbed by an auction sale. The extension of this latter principle to *all bonâ fide* under-tenures was at the same time suggested for particular consideration, with reference to a scheme submitted by Mr. Halliday (contained in the table abovementioned), whereby he proposed to maintain all *bonâ fide* under-tenures of whatsoever description at an auction sale; the purchaser succeeding to the rights of his predecessor, and nothing more; and to provide that in the event of a purchaser not being found under such circumstances, the mehal should lapse to Government free from all encumbrances other than those existing at the time of the Decennial Settlement, the Government having power to make a re-settlement of all the under-tenures. The opinion of the Revenue authorities was requested on the practicability of this scheme, and as to whether it could be adopted with safety to the Public Revenue.

* Mr. C. W. Smith,
„ W. Dampier,
„ G. F. Brown,
„ F. J. Halliday, and
„ A. J. M. Mills.

Legislative Consultation, 10th February, 1840, No. 18.

Legislative Consultation, 10th February, 1840, No. 17.

42. Replies from the following Officers serving in the Bengal Presidency, together with their opinions on the other provisions of the Draft Act of the 14th October 1839, were received in due course:—

These opinions are recorded on Legislative Consultation, 18th January, 1841, No. 3 to 9, No. 11 to 15 and No. 17.

A Digest of the opinions will be found recorded as No. 17 A. of the same consultation; but the opinions of Messrs. C. W. Smith and T. R. Davidson, having been received after it was prepared, are not included in it.

- J. Pattle, Esq., C. W. Smith, Esq., J. Lowis, Esq., } Members of the Sudder Board of Revenue.
- E. M. Gordon, Esq., Commissioner of Dacca.
- J. I. Harvey, Esq., Ditto, Chittagong.
- E. C. Ravenshaw, Esq., Ditto, Patna.
- Welby Jackson, Esq., Ditto, Moorshedabad.
- A. J. M. Mills, Esq., Ditto, Cuttack.
- G. F. Brown, Esq., Ditto, Bhaugulpore.
- T. R. Davidson, Esq., Ditto, Jessore.

43. The observations of the Lieutenant Governor, and Sudder Board of the North-Western Provinces are recorded as per margin.

Legislative Consultation, 18th January, 1841, No. 18.

44. After perusing the opinions of the several officers and authorities abovenamed, the Hon'ble Mr. Bird recorded a Minute, in which he suggested that as the discus-

Mr. Bird's Minute dated 24th October, 1840.

Legislative Consultation, 18th January, 1841, No. 19.

sions respecting the new Sale Law had given birth to so many suggestions, and such varied opinions as to the different points to be determined, it would be expedient to refer the whole of the correspondence, in the first instance, to a Committee to be composed of

The Hon'ble W. W. Bird,	Mr. F. J. Halliday,
The Hon'ble H. T. Prinsep,	and
Mr. J. R. Colvin,	Mr. J. P. Grant.

whose duty it would be "to consider each point *seriatim*, to weigh with care all the "arguments which had been advanced on both sides, and to present the result of their "deliberations in the shape of a revised Draft of Act for the determination of Go-"vernment."

45. The Hon'ble Mr. Prinsep considered that a reference to a Committee, without a previous decision by Government upon the principles to be followed out in the Draft, could only be productive of renewed discussions in that body, and applications to Government for instructions. He suggested, therefore, that before constituting the proposed committee, the Legislative Council should come to a distinct declaration of opinion on the material points embraced in the Draft. And he noticed the following points as those on which the decision of Government was necessary:

Mr. Prinsep's Minute, dated 1st November, 1840.

Legislative Consultation, 18th January, 1841, No. 20.

1*st*.—Shall the new law declare an abandonment on the part of Government of all claim to interest and penalty on arrears?

2*ndly*.—Whether to enact a day of absolute default, with certain sale, and no after receipt of the arrears due, leaving the sale to be made at leisure?

3*rdly*.—What shall be the cases of exemption from liability to sale—both absolute exemption, and temporary or qualified? Also, who shall exercise discretion in respect to any circumstances not specially provided for in the Draft, which may be considered to give claim to indulgences?

4*thly*.—Whether sales shall be ordinarily subject to the condition of purchasers upholding under-tenures?

5*thly*.—Whether sales shall be liable to cancelment before or after possession given, and with or without suit in court?

46. On each of the above points Mr. Prinsep recorded his sentiments; and he suggested, that after the Council should have declared their opinion as proposed by him, the Draft might "be committed to some one person to be recast and amended "according thereto, with advertence to the several suggestions in respect to details "that have been submitted, and when so prepared, the final review may be made by a "committee appointed as proposed by Mr. Bird."

47. It does not appear from the record of Act XII. 1841 that steps were taken in accordance with the suggestion contained in the Minute recorded by Mr. Bird for the appointment of a committee; though a conference between him and Mr. Prinsep,

(which will be noticed in its proper place,) was held at a later date, to settle the provisions of the Draft. The "declaration of "the opinion of the Council," invited by Mr. Prinsep, must, however, have been made orally,* in the course of discussions at the Council table; for a new Draft, differing materially from that of 14th October, 1839, was read in Council on the 18th January, 1841, which was published and referred for the opinions of the Governments of Bengal and the North-Western Provinces, and of the Sudder Courts at Calcutta and Allahabad.

* Mr. Bird was disinclined to increase the mass of writing connected with the Sale Law, by recording a minute expressive of his sentiments on each point mooted in the correspondence; and he therefore proposed the appointment of a committee as noticed above.

FIFTH DRAFT,

Being the second Draft published.

Legislative Consultation, 18th January, 1841, No. 21.

Legislative Consultation, 18th January, 1841, No. 22.

48. Comments on the provisions of this Draft were received from—

These opinions are recorded on Legislative Consultation, 19th July, 1841, No. 1 to 8 and No. 11 to 14.

- The Sudder Board of Revenue at Calcutta.
- W. G. Rose, Esq., of the Ramnuggur Indigo Factory in Moorshedabad.
- C. J. Richards, Esq., Chairman of the Indigo Planters' Association.
- Collector (Mr. W. Luke) and Zemindars of Sarun.
- Landholders' Society.
- Landholders at Dacca.
- C. D. Smith, Esq., a Judge of the Calcutta Sudder Court.

Recorded Legislative Consultation, 19th July, 1841, No. 24.

- Lieutenant Governor, North-Western Provinces.
- Sudder Court, North-Western Provinces.
- Sudder Board, North-Western Provinces.

49. A Digest of these opinions was prepared by Mr. Junior Secretary Halliday, with his comments on the principal suggestions contained in the correspondence; after which a conference was held between the Hon'ble Mr. Bird and the Hon'ble Mr. Prinsep, to consider the several comments and suggestions abovementioned, and to ascertain the points on which an irreconcilable difference of opinion existed between them. The result of this conference is shown in the paper recorded as per margin, which contains a statement of the alterations made by Messrs. Bird and Prinsep, in each Clause of the Draft of the 18th January, 1841.

Legislative Consultation, 19th July, 1841, No. 15.

SIXTH DRAFT.

Legislative Consultation, 19th July, 1841, No. 27.

50. The Draft thus amended was brought up and discussed in Council; and an important alteration was at this time made in it at the instance of the Governor General and Mr. Amos. Clause 5, Section XXVII. of the Draft, as settled by Messrs. Bird and Prinsep, was worded as follows:

"*Fifthly.*—Farms granted with the condition of exemption from cancelment "upon sale for arrears under special sanction of the Revenue Commissioner and the "Sudder Board."

51. The Governor General (Lord Auckland) and Mr. Amos disapproved of this Clause, and substituted the following in its stead:

"*Fifthly.*—Farms granted in good faith at fair rents by a former proprietor for "terms not exceeding twenty years under written and duly registered leases. Pro- "vided that when the stipulated rent of such farms exceeds Rupees 500 a notice, speci- "fying full particulars of the position, rent, and estimated area of the land, shall be "given in writing by the parties in every case to the Collector, within one month from "the date of the lease, and the Collector shall be at liberty to object to the same, in "the event of his seeing reason to believe that the security of the Public Revenue will "be materially affected thereby. The exception declared in this Clause shall not "extend to leases objected to by the Collector, by a notification to be fixed up in his "office, with the sanction of the Commissioner, within three months of the date of the "notice so made to him by the parties. Provided also, that a purchaser of an Estate "at a sale for arrears of Revenue shall be at liberty to sue in Court to set aside such "farms, on the ground of any failure of the conditions stated in the first sentence of "this Clause as essential to its validity."

52. After this alteration had been made, Mr. Amos recorded a minute, in which he pointed out that the Clause, as altered, required all leases for which protection was sought to be registered, but provided that the particulars as to rent, area, &c., should be furnished only in the case of farms exceeding Rupees 500 in rent value. He suggested that this distinction between leases for small rents and those for rents exceeding Rupees 500 should be abolished; and that "when any lease, small or large, is registered, the date and term "and the rent should be stated with particularity; the lessee to be afterwards bound "by such statement;" also that "the measurement, as far as it can be conveniently "obtained, should be entered approximately."

Minute by Mr. Amos, dated 3rd July, 1841.
Legislative Cons., 19th July, 1841, No. 26.

53. Mr. Amos considered that this provision would be sufficient security to induce purchasers to bid to the extent of the arrears of Revenue for which Estates were to be sold, and he thought that, beyond furnishing this inducement, Government had no concern in the matter.

54. The alteration made in Clause 5, Section XXVII. by the Governor General and Mr. Amos induced Mr. Prinsep to record a minute on the subject, and he availed himself of the opportunity to suggest a few minor alterations in the Draft. Mr. Prinsep approved of the abolition of *penalty*, in excess of legal interest; but he objected to a formal abrogation of the Government right to interest upon all kinds of land Revenue demands.

Minute by Mr. Prinsep, dated 8th July, 1841.
Legislative Cons., 19th July, 1841, No. 28.

(1.) He observed that by this law, protection would be given to the Ijaradars, or mere Tuhseel-people, who took their leases only to sub-let. He saw no advantage that would result from perpetuating the agency of such middle-men. He remarked that, if temporary holders of twenty years are to be protected on the condition of their rents being fair, it is inconsistent to eject and deprive of their farms men who have taken Talooks honestly at full rents in perpetuity. He said that Estates sold for arrears do not always yield a surplus

Clause 5, Section XXVII.

beyond the arrear. They are frequently bought in by Government, and when so bought in, the assets have very often been found insufficient to cover the annual Revenue. It would be unwise in such cases, Mr. Prinsep thought, to deprive Government (or auction purchasers) of the power to make a new Jummabundee if they could. And he remarked that registry of leases would be no evidence of the rent being fair. Mr. Prinsep objected to the provisions of the Draft as it stood; but he thus explained the protection he was prepared to give to leaseholders:—"I am for giving "leaseholders a means of securing their title similar to that conferred on those who "take building leases in Garden Reach from Zemindars, and upon a principle, there- "fore, fully recognized by our Revenue system. Let the Collectors have the power, "subject to sanction by a Commissioner, of certifying upon a lease that the rent is "sufficient for the security of the Government Revenue, and such a certificate may "give protection against the effect of a Government sale, but it should be a condition, "that the extent of land and rate per acre, or beegah, shall be declared and specified "in the lease, and a discrepance in the real extent compared with the specification "should either vitiate the lease, or render the tenant liable to the difference, accord- "ingly as it might be proved intentional or unavoidable and accidental. * * * "I see no difficulty in the Board, or Government, laying down a broad rule, that for "the security of the Revenue, a certain rate per beegah, or per acre, taken of course "at a maximum of the usual agricultural rates for each district, is sufficient; and "Government has no desire to cancel leases which specify such rents. This is quite "a different thing from a general uncontrolled power of leasing to agriculturists, "or to middle-men, or to lease-jobbers in any form, and with specification of area, "or without, under the mere check of a Civil action by Government, or by an auction "purchaser, to prove such a vague thing as that the rent is not *fair*."

Mr. Prinsep proposed an additional Section, to be inserted after Section XXI., to provide for the appropriation of the surplus purchase money in case of claims by creditors while the sale is under litigation.

Section XXI.

He also suggested several verbal alterations.

55. In consequence of the minutes recorded by Messrs. Amos and Prinsep, the Draft was again brought under discussion in Council, on the 12th of July, 1811,* when it was determined that—

* See concluding paragraph of Mr. Bird's minute, dated 19th July, 1841.

Legislative Cons., 19th July, 1841, No. 30.

The interest and penalty Clause (Section II.) should remain unaltered.

The Section suggested by Mr. Prinsep, in respect to the claims of creditors to the surplus money of an Estate sold for arrears, should be added as a Proviso to Section XXI.

The following alterations should be made in Clause 5, Section XXVII.

Draft as it stood.	*As altered.*
	N. B. Words in the text within brackets, and in italics, omitted, in the Draft as altered.
"Farms granted in good faith at fair rents (1) by a former proprietor for terms	(1) and for specified areas.

not exceeding twenty years under written (2) [*and duly registered leases.*] Provided that [*when the stipulated rent of such farms exceeds* 500 *rupees a*] (3) Notice specifying full particulars of the position, rent and [*estimated*] area of the lands, (4) [*shall be given in writing by the parties in every case to the Collector within one month from the date of the lease*], and the Collector shall be at liberty to object to the same in the event of his seeing reason to believe that the security of the public Revenue will be materially affected thereby. The exception declared in this Clause shall not extend to leases objected to by the Collector, by a Notification to be fixed up in his office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties. Provided also that a purchaser of an Estate at a sale for arrears of Revenue shall be at liberty (5) [*to sue in Court to set aside such Farms on the ground of any failure of the conditions stated in the first sentence of this Clause as essential to its validity.*]

(2) leases registered within a *month from* their date.

(3) a written

(4) the terms of the lease, and the names of the parties, shall at the same time be given by the latter to the Collector in every case.

(5) by suit in Court to set aside all such farms, although the same be under written and duly registered leases, and although such notice may have been given as aforesaid, if the same shall not have been granted in good faith at fair rents.

56. The Draft was now ripe for enactment; and it would have been immediately passed into law, but for further objections recorded by Mr. Prinsep at this stage of the proceedings. He now protested strongly against the 16th Section of the Draft, which authorized the forfeiture to Government of the deposit of a defaulting purchaser. He contended, that as a matter of right, the forfeited deposit ought to be carried *to the credit of the estate sold;* but he was over-ruled by the opinions of the Governor General (Lord Auckland,) and Messrs. Bird and Amos, who argued, that the forfeiture of the deposit to Government was the express law till 1822; that such also had been the practical administration of the Revenue Laws since 1822, and was the natural construction of Section XXI. Regulation VII. of 1822; that it was not mequitable that the deposit, viewed as a penalty or fine, should be credited as a forfeiture to Government; that the Government might properly claim compensation for the cost and trouble caused by

Mr. Prinsep's Minutes, dated 16th and 19th July, 1841.

Leg. Cons. 19th July, 1841, No. 29 and 31.

Minute by Mr. Bird, Ditto by Mr. Amos, Ditto by the Governor General, } dated 19th July 1841.

Leg. Cnos. 19th July, 1841, No. 30, 25 and 32.

the necessity of resorting to the sale process for the collection of the Revenue; that the defaulting proprietor had no right in equity beyond an effectual process against the defaulting bidder, (which was provided for in the Draft,*) for a difference of price at a first sale and at a re-sale; that if the full value of an Estate should be offered at a second as well as at a first sale, which was by no means improbable, the defaulting proprietor had surely no right to receive, beyond the full value of his estate, the forfeited deposit of the first bidder; (the principal object of the deposit* being to deter collusive bidders, and to make the sale at once a real *bonâ fide* transaction, by which the best price might be obtained for the proprietor;) and lastly, that all claim of interest and penalty was now to be remitted to defaulting proprietors, who might themselves purchase, subject to certain equitable disabilities in regard to under-tenants, and that no expedient proposition could be made for preventing the abuses and delays in the payment of Revenue to which such permission might lead, except one for the absolute forfeiture of a deposit.

*Section XVI.

*25 per cent.

57. The following extract from the Governor General's Minute, bearing upon Clause V., Section XXVII. of Act XII. of 1841, may be quoted in this place, as explanatory of the exact intentions of Government in enacting that Clause. It will also serve more fully to exhibit the difference of opinion which prevailed on the subject of upholding under-tenures between Mr. Prinsep and the rest of the Council:—

Leg. Cons. 19th July, 1841, No. 32.

"The rule in this Clause, respecting a security to farming leases under certain "circumstances in the event of a sale, is regarded by me with peculiar interest. The "indiscriminate destruction of under-tenures by a sale for arrears, has always been "considered as one of the chief blemishes of our system; and I earnestly hope, that "this experiment to give some certainty and security to leases, may prove successful. "We propose to give stability, on the conditions specified, for twenty years, and not to "perpetual leases; because, at least, as a first step, it may be unwise to run the "hazard of error in regard to a perpetual tenure, which we may yet be justified in "incurring for a limited term; and because twenty years may fairly be considered a "sufficient term to admit of good return for capital employed upon land. Under the "precautions provided, I do not anticipate any serious danger to the Revenue from "such leases. While to have required in every instance a previous approbation from "the Collector, would, it may be feared, have probably nearly defeated the object of "the Clause. It is exceedingly likely that experience may show that the Provisions "of the Clause might have been much amended; but, as a foundation of what I hope "will be a very beneficial change, I cordially vote for its being passed in its present "form, which has been settled after repeated and careful discussions."

58. The Draft was passed into law on the 19th of July, 1841, as Act No. XII., intituled "an Act for amending the Bengal Code in regard to sales of land for arrears of Revenue."

Leg. Cons. 19th July, 1841, No. 33.